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# NOTES ON THE

# REVENUE ACT OF 1918

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SUBMITTED BY THE SECRETARY OF THE TREASURY, WITHOUT RECOMMENDATION AT THIS TIME

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PRINTED FOR THE USE OF THE

COMMITTEE ON WAYS AND MEANS

HOUSE OF REPRESENTATIVES

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## PART I

SUPPLEMENT TO

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Federal Services

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HOUSE OF REPRESENTATIVES.

SIXTY-SIXTH CONGRESS, FIRST SESSION.

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JAN 6 1920

## LETTER OF TRANSMITTAL.

THE SECRETARY OF THE TREASURY,
*Washington, November 3, 1919.*

MY DEAR MR. FORDNEY: In the course of interpreting the war-revenue act of 1918 and framing appropriate regulations a number of suggestions for the amendment of the law have occurred to the various officers of the Internal Revenue Bureau. These suggestions have been recorded and associated with similar suggestions received from outside sources for further consideration, and I am sending you herewith a set of this material (as Part I of the attached compilation) in response to your request of September 23, 1919, in which you announced that the Committee on Ways and Means will soon undertake a study of the internal-revenue legislation.

This material is not in the form of recommendations by the department, as a decision has not yet been reached with respect to all of the suggestions; and, indeed, the department entertains serious doubt as to the advisability of the adoption of some of them.

When the department has had sufficient time to study, in the light of further administrative experience, all the suggestions which have been assembled and such additional suggestions as may occur to the officers of the department, I shall be pleased to cooperate with the committee in the complete analysis of the law and the legislative requirements, as well as to detail to the committee the experts of the department who have had occasion to give personal study and attention to this matter.

In further compliance with your request of September 23, 1919, I have had a digest prepared of the decisions of the United States courts (arranged in accordance with the subject matter) under the internal-revenue acts from 1909 to 1919, both inclusive, which is inclosed herewith as Part II of the attached compilation.

Sincerely, yours,

CARTER GLASS.

Hon. JOSEPH W. FORDNEY,
*Chairman Committee on Ways and Means,*
*House of Representatives.*

## NOTES ON THE REVENUE ACT OF 1918.

The only purpose of Part I of the following notes is to compile the various suggestions made to the Treasury Department with respect to amending the revenue act of 1918 in convenient form in one document for the consideration of the Ways and Means Committee of the House, the Finance Committee of the Senate, and the officials of the Treasury Department charged with the administration of the various sections. These notes must not be considered as recommendations of the Treasury Department. In the preparation of this compilation the suggestions have been arranged in accordance with the section numbers of the revenue act of 1918.

Part II contains a digest of the decisions of the United States courts (arranged in accordance with the subject matter) under the internal revenue acts from 1909 to 1918, inclusive. The West Publishing Co. and the Banks Law Publishing Co. authorized such use of their syllabi in the preparation of this compilation as the Treasury Department deemed proper. The department desires in this way to acknowledge the valuable assistance rendered it by these companies.

In the suggested amendments the part printed in roman shows the text of the present law; new matter that has been suggested is indicated in italics; and matter that has been suggested to be stricken out is shown in stricken-through type.

# NOTES ON THE REVENUE ACT OF 1918.

## TITLE II—INCOME TAX.

**Section 200. Extension of the class of personal service corporations.**

The definition of the term "personal service corporation" contained in section 200 excludes from the class of personal service corporations all corporations in which capital (whether invested or borrowed) is a material income-producing factor. It has been suggested that this definition be amended so as to include all corporations whose principal stockholders regularly devote their chief time and attention to the active conduct of the affairs of the corporation, except (*a*) foreign corporations, and (*b*) corporations 50 per cent or more of whose gross income consists of income derived from a Government contract or contracts made between April 6, 1917, and November 11, 1918, both dates inclusive. If this change were made, it would be desirable to change the term applied to the class from "personal service" to some such term as "personal corporation," "close corporation," "corporation partnership," or "private company." It might also be expedient to require, if the proposed extension of this class were made, the principal stockholders to own a stipulated proportion of the stock, say 85 per cent, and to place a limit, say 10, upon the number of stockholders not regularly devoting their chief time and attention to the active conduct of the affairs of the personal corporation.

Among the arguments advanced in support of this proposed change are the following:

1. Under the legislation as it now stands, the stock of a corporation may be closely held or owned—except for qualifying shares—by one person; the owner or owners may devote themselves so effectively and exclusively to the conduct of the business that it is impossible to distinguish satisfactorily between the profits of the business paid to stockholders as dividends and the personal compensation paid to the officers as salaries; and the principal competitors of the corporation in question may be partnerships or sole proprietors. Nevertheless, if capital is a material income-producing factor in the operation of the corporation, the corporation takes its place with corporations rather than partnerships, and pays the war-profits or excess-profits tax in place of income surtaxes upon undistributed profits.

The resulting differences are so arbitrary and in many cases so extreme that it is suggested that the class of personal service corporations should be extended to cover all corporations whether employing a material amount of capital or not, in the active conduct of whose affairs the principal stockholders are regularly engaged.

2. The treatment of partnerships and corporations under the present legislation is radically different. The ordinary corporation of a given size or class in a particular line of business may pay 50 per cent of its net income in income and profits taxes, whereas the members of the average partnership in the same line of business may pay only 20 per cent of their net income in normal and additional income taxes. The profits left in the business are subject in the one case to income surtaxes but not to profits taxes; in the other case they are subject to profits taxes but not to income surtaxes. This vital difference turns upon the mere form of organization, yet the two forms of business may be in close competition.

It is suggested that different treatment in the tax law should turn upon distinctions of fact and not of form, and that real distinction exists between the closely owned corporation whose stockholders give their principal time and attention to the business of the corporation, and those very large corporations whose stockholders are widely scattered and are in many respects investors rather than owners. It is suggested that the tax law should follow more closely this fundamental economic distinction.

3. The corporate form of organization is now used or abused by wealthy individuals who incorporate their personal business and investments and thus escape surtaxes upon that amount of their income which is reinvested or saved. Section 220 provides a remedy for this abuse, but it can be applied only by a troublesome special procedure which will necessarily restrict its use to a comparatively small proportion of cases. A large proportion of these cases would be automatically and easily dealt with if the law be amended as here proposed.

4. The suggested amendment would go far toward the solution of the difficult problem of determining what constitutes reasonable salary or compensation in the case of officers of a corporation who own all or nearly all of its stock. In such situations the natural elements or checks which keep salaries within reasonable limits are absent, and the department is forced to rely upon estimates which are as unsatisfactory to the Government as they are irritating to the taxpayers.

5. The present definition of a personal service corporation is exceedingly difficult to apply with precision. To decide in thousands of cases what circumstances make a given amount of capital "a material

income-producing factor," is an elusive and difficult administrative task which, other things being equal, it is highly desirable to avoid.

It has been suggested that these changes could be accomplished by an amendment in substantially the following form:

Strike out the fourth paragraph of section 200, which is as follows:

~~The term "personal service corporation" means a corporation whose income is to be ascribed primarily to the activities of the principal owners or stockholders who are themselves regularly engaged in the active conduct of the affairs of the corporation and in which capital (whether invested or borrowed) is not a material income producing factor; but does not include any foreign corporation, nor any corporation 50 per centum or more of whose gross income consists either (1) of gains, profits or income derived from trading as a principal, or (2) of gains, profits, commissions, or other income, derived from a Government contract, or contracts made between April 6, 1917, and November 11, 1918, both dates inclusive;~~

and insert in lieu thereof the following:

*The term "personal corporation" means a corporation (1) whose principal stockholders (a) regularly devote their chief time and attention to the active conduct of the affairs of the corporation, and (b) own not less than 85 per centum of the capital stock of the corporation and (2) in which the number of stockholders not regularly devoting their chief time and attention to the active conduct of its affairs does not exceed ten;*

**Section 202. Gain or loss from exchange of property.**

Subdivision (*b*) of section 202 provides for the inclusion in the computation of income of gain or loss resulting from the exchange of property by the comparison of the fair market value (if any) of the property received in exchange with the cost or, if acquired prior to March 1, 1913, the fair market price or value on that date of the property relinquished. The only exception which the law provides to this rule is when in connection with the reorganization, merger, or consolidation of a corporation a taxpayer receives in place of stock or securities owned by him new stock or securities of no greater aggregate par or face value. The present law provides in such case that no gain or loss shall be deemed to occur from the exchange and that the new stock or securities received shall be treated as taking the place of the stock, securities, or property exchanged.

It has been suggested that there are other similar transactions in which it is difficult to determine the gain or loss in the absence of an actual sale and which should be treated in the same manner in connection with the reorganization, merger, or consolidation of a

corporation. The following four classes of transactions have been urged as proper additional exceptions to the general rule laid down in section 202 (*b*):

1. When the market value of the property received can not be satisfactorily determined.

2. When property is exchanged in return for all or substantially all the stock of a corporation.

3. When property is exchanged between corporations affiliated within the meaning of section 240.

4. When, in connection with the reorganization of a corporation or partnership, one corporation or partnership exchanges property with another corporation or partnership involved in such reorganization, or a person receives in place of stock or securities owned by him new stock or securities.

It has been suggested that these changes could be accomplished by an amendment in substantially the following form:

Amend section 202 by adding at the end thereof the following new subdivision:

(c) *When property is exchanged for other property, the property received shall be treated as the equivalent of cash to the amount of its fair market value; but in the exceptional cases enumerated below no gain or loss shall be recognized and the property received shall, for the purpose of determining the allowances for depreciation, depletion, amortization, and other like purposes, be treated as taking the place of the property exchanged when the change is merely in form and not in substance:*

(1) *The market value of the property received can not in the opinion of the Commissioner be satisfactorily determined;*

(2) *A person or persons exchange property for not less than 95 per cent of the stock of a corporation;*

(3) *Property is exchanged between corporations affiliated within the meaning of section 240;*

(4) *In connection with the reorganization of a corporation or partnership, one corporation or partnership exchanges property with another corporation or partnership involved in such reorganization, or a person receives in place of stock or securities owned by him new stock or securities. The word "reorganization" as used in this paragraph includes a merger, consolidation, or a mere change in the identity or form or organization of a corporation or partnership;*

*The provisions of this subdivision shall be taken to declare and not to amend subdivision (b) of this section; and nothing herein shall be construed to modify the provisions of sections 330 or 331, or to authorize the direct or indirect exemption of any stock dividend or any capitalization of surplus tantamount thereto lawfully subject to the tax.*

**Section 204. Net losses.**

It has been suggested that section 204, which affords relief in the case of net losses sustained in "any taxable year beginning after October 31, 1918, and ending prior to January 1, 1920," should be made general or permanent, and that the definition of "net losses" contained in this section be amended to resolve in the affirmative the doubt as to whether, if a taxpayer sustains losses both from the operation of his business and from the sale of capital assets other than those constructed or acquired for the production of war essentials, both kinds of losses are to be recognized in computing the net loss.

In support of this suggestion it has been urged that as the legislation is now worded, it gives no benefit to a taxpayer whose business year runs from February, 1919, to February, 1920, although a taxpayer whose business year coincides with the calendar year 1919 and a taxpayer whose year runs from November, 1918, to November, 1919, receives the benefit provided by the law. It is also urged in support of this suggestion that it is desirable to go further than the mere correction of this discrimination, and that the right to spread a loss should be recognized as a permanent policy. It is said that the annual accounting period, the striking of a balance of gain or loss every 12 months, is merely an approximation resting upon convenience and fiscal necessity, and that the result shown is frequently unreal, for if a business concern makes $20,000 in 1918, loses $10,000 in 1919, and makes $5,000 in 1920, it has not earned profits of $25,000 in the three-year period, but only $15,000.

It has been suggested that these changes could be accomplished by an amendment in substantially the following form:

Strike out subdivisions (a) and (b) of section 204 and substitute in lieu thereof the following:

> SEC. 204. (a) That as used in this section the term "net loss" refers only to net losses resulting from either (1) the operation of any business regularly carried on by the taxpayer, or (2) the bona fide sale by the taxpayer of plant, buildings, machinery, equipment, or other facilities, constructed, installed, or acquired by the taxpayer on or after April 6, 1917, for the production of articles contributing to the prosecution of the present war; and when so resulting means the excess of the deductions allowed by law (~~excluding in the case of corporations amounts allowed as a deduction under~~ *except the deductions authorized by* paragraph 6 of subdivision (a) of section 234 *and losses of the kind excluded by the limitation hereinbefore prescribed*) over the sum of the gross income plus any interest received free from taxation both under this title and under Title III.

(b) If for any taxable year beginning after October 31, 1918, ~~and ending prior to January 1, 1920,~~ it appears upon the production of evidence satisfactory to the Commissioner that any taxpayer has sustained a net loss, the amount of such net loss shall, under regulations prescribed by the Commissioner with the approval of the Secretary be deducted from the net income of the taxpayer for the preceding taxable year; and the taxes imposed by this title and by Title III for such preceding taxable year shall be redetermined accordingly. Any amount found to be due to the taxpayer upon the basis of such redetermination shall be credited or refunded to the taxpayer in accordance with the provisions of section 252. If such net loss is in excess of the net income for such preceding taxable year, the amount of such excess shall under regulations prescribed by the Commissioner with the approval of the Secretary be allowed as a deduction in computing the net income for the succeeding taxable year.

**Section 213 (b) (1). Proceeds of life insurance policies.**

This paragraph excludes from gross income "the proceeds of life insurance policies paid upon the death of the insured to individual beneficiaries or to the estate of the insured." It has been suggested that this paragraph be amended so as to omit the limitation resulting from the words "to individual beneficiaries or to the estate of the insured." The adoption of this suggestion would leave no doubt as to the right of a partnership to exclude from gross income the proceeds of any life insurance policy in which the partnership is named as beneficiary and would extend to corporations a similar right.

In support of this suggestion it has been urged that business concerns—partnerships and corporations—are no longer allowed as deductions the amount paid for premiums on policies insuring in their favor the lives of officers and employees, and that such insurance constitutes a reasonable and proper provision against actual losses which business enterprises sustain in the death of responsible officers and employees.

It has been suggested that this change could be accomplished by an amendment in substantially the following form:

Strike out paragraph (1) of subdivision (b) of section 213 and insert in lieu thereof:

(1) The proceeds of life insurance policies paid upon the death of the insured ~~to individual beneficiaries or to the estate of the insured~~;

**Section 213 (b) (3). Value of property acquired by gift, bequest, devise, or descent.**

Under this paragraph of the law the owner of property acquired by gift, bequest, devise, or descent takes over such property at its market value when he acquires it and thereafter depreciation, depletion, and

gain or loss are computed on the basis of this value which is often higher than the value when the property was originally acquired.

It has been suggested that, although transfers of property by gift, bequest, devise, or descent should not be treated as giving rise to realized gain or loss, whenever thereafter gain or loss is realized by actual sale, the gain or loss at that time should be measured as the difference between the price received and the cost to the original owner who acquired the property for value.

It is urged in support of this suggestion that the effect of the present legislation is to permit realized gains due to appreciation taking place during the previous ownership to escape taxation.

It has been suggested that it is desirable also to clear from doubt the status of life interests or estates. Life tenants have made claim for an obsolescence allowance based upon shrinkage due to the mere passage of time in the so-called capital value of the life interest. Certain State statutes and the decisions thereunder give color to the claim that the value of a life interest at the time received is such a capital value as may serve as the basis of deductions for obsolescence. If these claims be allowed, cases would arise in which a clear income from an unimpared corpus divided between a life tenant and remainderman would entirely escape taxation—the income from the property being wiped out by the annual shrinkage or obsolescence of the so-called capital value of the life estate.

It has been suggested that these changes could be accomplished by an amendment in substantially the following form:

Strike out paragraph (3) of subdivision (b) of section 213 and insert in lieu thereof:

> (3) The value of property acquired by gift, bequest, devise, or descent (but the income from such property shall be included in gross income, *and such property shall be valued for the purposes of computing invested capital, depreciation, depletion, gain or loss, under Title II and III, as if in the possession of the previous owner; and the income from such property shall be included in the gross income without deduction for any shrinkage in the so-called value of a life interest due to the mere lapse of time*);

**Section 213 (c) and Section 233 (b). Gross income of nonresident aliens and foreign corporations.**

These paragraphs of the law provide that in the case of nonresident alien individuals and foreign corporations gross income shall include "the gross income from sources within the United States."

It has been suggested that these paragraphs be amended to exempt or exclude from gross income interest on deposits in banks, banking associations, and trust companies received by alien individuals or

foreign corporations not engaged in trade or business within the United States and not having any office or any place of business therein.

It is urged in support of this suggestion that the loss of revenue which would result if this deduction were allowed would be relatively small in amount, while the exemption of such interest from taxation would be in keeping with the action of other countries and would encourage nonresident alien individuals and foreign corporations to transact financial business through institutions located in the United States.

It has been further suggested in connection with these paragraphs of the law that the gross income of nonresident alien individuals and foreign corporations be so defined as to exclude profits attributable to the manufacture or production of goods by nonresident aliens or foreign corporations outside the United States, and that such profits be determined by processes of allocation or apportionment under administrative regulations.

It has been urged in support of this suggestion that under the present language of the law foreign producers or manufacturers who sell from an established office in the United States are subject to taxation on the entire profit derived from the goods sold within this country, although the greater part of this profit may be attributable to manufacture or production abroad, whereas foreign producers or manufacturers may escape all taxation by establishing their selling agency as well as their factories and plants outside the United States. It is also urged that the present rule is inconsistent because in the case of a factory of a foreign corporation located in the United States and making sales abroad the entire profit is taxed on the ground that this income is derived from sources (that is, manufacture or production) within the United States, whereas if the factory of a foreign corporation is located abroad and sales are made through an office in the United States, the entire profit is again taxed on the ground that the income is derived from sources (that is, sale) within the United States.

It has been suggested that these changes could be accomplished by amendments in substantially the following form:

Strike out subdivision (c) of section 213 and insert in lieu thereof:

> (c) In the case of nonresident alien individuals, gross income includes only the gross income from sources within the United States, including—
>
> (1) Interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, *except interest on deposits in banks, banking associations, and trust companies received by nonresident alien individuals not engaged in trade or business within the United States or not having an office or place of business therein;*

(2) Dividends from resident corporations; ~~and including all~~

(3) Amounts received (although paid under a contract for the sale of goods or otherwise) representing profits ~~on the manufacture and disposition of goods within the United States~~ *from the sale or disposition of goods within the United States manufactured or produced by nonresident alien individuals without the United States, but not including such amounts received by nonresident alien individuals not engaged in trade or business within the United States, or not having an office or place of business therein. The profits attributable to the manufacture or production of goods by nonresident alien individuals without the United States shall be determined by processes of allocation or apportionment under regulations to be prescribed by the Commissioner with the approval of the Secretary.*

Strike out subdivision (b) of section 233 and insert in lieu thereof:

(b) In the case of a foreign corporation gross income includes only the gross income from sources within the United States, including ~~the~~

(1) Interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, *except interest on deposits in banks, banking associations and trust companies received by foreign corporations not engaged in trade or business within the United States or not having an office or place of business therein;*

(2) Dividends from resident corporations; ~~and including all~~

(3) Amounts received (although paid under a contract for the sale of goods or otherwise) representing profits ~~on the manufacture and disposition of goods within the United States~~ *from the sale or disposition of goods within the United States manufactured or produced by foreign corporations without the United States, but not including such amounts received by foreign corporations not engaged in trade or business within the United States or not having an office or place of business therein. The profits attributable to the manufacture or production of goods by foreign corporations without the United States shall be determined by processes of allocation or apportionment under regulations to be prescribed by the Commissioner with the approval of the Secretary.*

If the preceding amendments are adopted, corresponding changes should be made in section 221 (dealing with payment at source) and 214 and 234 authorizing certain deductions to nonresident alien individuals and foreign corporations respectively.

**Section 213 (d). Compensation for personal service and gains from sales or dealings in property.**

This paragraph includes in gross income all gains, profits, and income derived by way of compensation for personal service and from sales and dealings in property whether real or personal, and makes

all such income taxable as income of the year in which received. It has been suggested that a special rule be provided to afford relief to taxpayers who receive in any one year an extraordinary amount of income representing an accumulation of saving or effort over a period of several prior years.

In support of this suggestion it has been argued that compensation paid in a lump sum in one year for services rendered partly in that year and partly in prior years should not be subjected to the high rates of surtax which apply if the income is regarded as income of a single taxable year, but that a part of such income should be set aside and taxed separately according to a special method. It has been pointed out also that the realization in one year of gains from the sale of capital assets or long-time investments may similarly result in tax out of all reasonable proportion to the tax which would have been paid if the gain were prorated over the entire period. As it is obviously undesirable to reopen and amend the returns of prior years for the purpose of prorating such income, those who have supported the suggestion for the amendment of this section of the law favor the creation of a special method for computing the tax on all extraordinary income arising within the taxable year.

It has been suggested that these changes could be accomplished by an amendment in substantially the following form:

Amend section 213 by adding at the end thereof a new subdivision, as follows:

(d) *Income received after January 1, 1919, in any taxable year from compensation for personal service rendered during a period of three or more years, and profits derived from sales or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property, where such ownership or interest has existed for a period of three or more years, and amounts to not less than 50 per centum of the ordinary income of the taxpayer for the taxable year, shall be deemed to be, for the purposes of this title, extraordinary income.*

*Such extraordinary income shall be deemed to be income of the first year in which it can be definitely determined, but the taxpayer may at his option return it for purposes of taxation under this title separate and apart from his ordinary income for such year. In cases in which the taxpayer returns his extraordinary income separate and apart from his ordinary income, the extraordinary income shall be taxed at the normal rate of the year in which the income is determined, plus an additional amount equivalent to 25 per centum of such income.*

*All deductions to which the taxpayer is entitled unless clearly and directly related to the extraordinary income shall be taken against the ordinary income, but any excess of such deduction over ordinary income may be taken against the extraordinary income.*

**Section 213 (e). Replacement fund.**

During the war, in the case of property requisitioned for war purposes by the Government and property lost or destroyed in whole or in part through war hazards, especially in the case of ships, it happened that at the time of requisition or loss the market value of such ships was considerably increased over the cost or market value as of March 1, 1913, in cases in which the property was acquired prior to that date, and that in practically no case would the taxpayer have been willing to sell the property for its appraised value at the time of requisition or loss.

To require the taxpayer to pay income and war profits and excess profits taxes upon the difference between the cost or market price on March 1, 1913, and the compensation received at the time of requisition or loss would have been to take such a large proportion of the amount received for the vessel that, although the owner desired to replace the same, the taking of the tax by the Government would have made it impossible in practically every instance.

In all cases where the owner desired to replace the vessel the department allowed him to create a replacement fund and upon giving bond and security for the payment of the taxes assessable by the Government to defer payment of the taxes for a reasonable period in order to replace the vessel, and it required a taxpayer to carry the new or restored property in its accounts at an amount not in excess of that at which the requisitioned, damaged, or destroyed property was carried, except and to the extent that such new or restored property had an increased productive capacity.

Treasury Decision 2706 sets forth the replacement fund procedure adopted by the Treasury Department.

It has been suggested that this procedure should be made applicable to all cases of requisitioned property by the Government, or property lost or destroyed, in whole or in part, by fires, storms, shipwreck, or other casualties.

It has been suggested that this could be accomplished by an amendment in substantially the following form:

Amend section 213 by adding at the end thereof a new subdivision as follows:

> (e) *In the case of property title to which has been requisitioned by the Government, or property which has been lost or destroyed, in whole or in part, by fire, storm, shipwreck, or other casualty, the amount received by the owner as compensation for the property in excess of the value of the property on March 1, 1913, or its cost, if acquired after that date, may be placed in a replacement fund for the replacement in kind of the lost or damaged property. In case a taxpayer establishes a replacement fund, the entire amount of the*

*compensation so received may be held in such fund, and the accounting for gain or loss thereupon deferred for a reasonable period of time, to be determined by the Commissioner, with the approval of the Secretary.*

*In such cases the taxpayer shall make application under oath to the Commissioner for permission to establish such a replacement fund. The application shall state all the facts relating to the transaction and that the taxpayer will proceed immediately to replace or restore such property.*

*The taxpayer shall be required to furnish a bond with such security or surety as the commissioner, with the approval of the Secretary, shall require for an amount not less than the estimated income, war-profits, and excess-profits taxes assessable by the United States upon the income so carried to the replacement fund. In lieu of such bond the taxpayer may at his option deposit as security for such estimated amount of taxes, obligations of the United States, such obligations to be held in trust as such security in a bank or trust company designated by the Commissioner, with the approval of the Secretary.*

*When the replacement or restoration is made, the new or restored property shall not be valued in the accounts of the taxpayer at an amount in excess of that at which the requisitioned, damaged, or destroyed property was carried, except and to the extent that such new or restored property has an increased productive capacity.*

**Section 214 (a) (2) and section 234 (a) (2). Deductibility of interest paid on indebtedness incurred to purchase or carry obligations of the United States.**

These paragraphs, as now worded, permit taxpayers (individuals and corporations, respectively) to borrow money for the purpose of purchasing or carrying tax-free 3¼ per cent Victory notes and to deduct interest paid upon such borrowed money, although the interest received from such notes is exempt from all Federal, State, and local taxation except estate or inheritance taxes.

It has been suggested that this departure from the principle that taxpayers, in computing taxable income, should not be permitted to deduct interest paid on indebtedness contracted to purchase or carry tax-free securities, is unwise and should not be continued and that the law should be amended so as to remove the exceptionally favorable status which has been accorded this particular issue of Government securities.

It has been suggested that this change could be accomplished by amendments in substantially the following form:

Strike out paragraph (2) of subdivision (a) of section 214 and insert in lieu thereof;

(2) All interest paid or accrued within the taxable year on its indebtedness, except on indebtedness incurred or continued to purchase or carry obligations or securities (other than obligations of the United States ~~issued after September 24, 1917~~ *the income from which is subject, to graduated additional income taxes, commonly known as surtaxes and excess-profits and war-profits taxes*), the interest upon which is wholly exempt from taxation under this title as income to the taxpayer, or, in the case of a nonresident alien individual, the proportion of such interest which the amount of his gross income from sources within the United States bears to the amount of his gross income from all sources within and without the United States.

Strike out paragraph (2) of subdivision (a) of section 234 and insert in lieu thereof:

(2) All interest paid or accrued within the taxable year on its indebtedness, except on indebtedness incurred or continued to purchase or carry obligations or securities (other than obligations of the United States ~~issued after September 24, 1917~~ *the income from which is subject to graduated additional income taxes, commonly known as surtaxes and excess-profits and war-profits taxes*), the interest upon which is wholly exempt from taxation under this title as income to the taxpayer, or, in the case of a foreign corporation, the proportion of such interest which the amount of its gross income from sources within the United States bears to the amount of its gross income from all sources within and without the United States;

**Section 216. Personal credits of a taxpayer whose status changes during the year.**

This section of the law does not specify whether the credits therein allowed are to be taken according to the status of the taxpayer at the beginning or at the end of the taxable year or on the basis of prorating the credits allowable under two or more statuses during the time within the taxable year throughout which each status continued.

It has been suggested that these credits are not sufficient in amount to justify the inconvenience of prorating and that the ruling of the department that the status of the taxpayer at the close of the taxable year is controlling should be confirmed by legislation.

It has been suggested that this change could be accomplished by an amendment in substantially the following form:

Amend section 216 by ad ding a new subdivision at the end thereof as follows:

(f) *The credits allowed by subdivisions (c), (d), and (e) of this section shall be determined by the status of the taxpayer on the last day of the period for which the return of income is made, but in*

*the case of an individual who dies during the taxable year, such credits shall be determined by his status at the time of his death, and in such case full credits shall be allowed to the surviving spouse, if any, according to his or her status at the close of the period for which such survivor makes return of income.*

**Section 216 (a), section 234 (a) (6), and section 325 (a). Credit or deduction allowed for dividends received from foreign corporations the net income of which is in part subject to income tax.**

Under the wording of these sections a taxpayer who receives a dividend from a corporation who receives no income from sources within the United States must pay full normal or corporation tax upon such dividend, but if any portion—however small—of the income of the foreign corporation is derived from sources within the United States the entire dividend is an allowable credit to the individual who receives the dividend.

It has been suggested that under this condition of the law a foreign corporation has only to make such arrangements as will result in securing a small amount of income from sources within the United States in order to exempt from income tax all dividends paid to American stockholders, and that the law should be amended so that this credit to the American stockholder shall be limited to that proportion of the dividend which the net income of the foreign corporation subject to income tax bears to its entire taxable income.

It is further urged in support of this suggestion that the taxability of the dividend has important reactions upon the invested capital of any American stockholder subject to profits tax because of the fact that stock of a foreign corporation is an admissible asset if the dividend be in any part subject to tax, whereas it is an inadmissible asset if the dividend is exempt.

It has been suggested that these changes could be accomplished by an amendment in substantially the following form:

(1) That subdivision (a) of section 216 be amended by striking out the semicolon and substituting therefor a colon and the following:

*Provided, That in the case of dividends received from a foreign corporation there shall be credited under this subdivision only that proportion of such dividends which the net income of such foreign corporation subject to income tax under this act for the year ending prior to the beginning of the taxable year in which such dividends were declared (or so much of such years as the corporation was in existence) bears to its entire taxable income for the same year as computed for purposes of income tax under this act;*

(2) That paragraph (6) of subdivision (a) of section 234 be amended by striking out the semicolon and substituting therefor a colon and the following:

*Provided, That in the case of dividends received from a foreign corporation there shall be deducted a proportion thereof computed in the manner prescribed in subdivision (a) of section 216;*

(3) That the definition of "inadmissible assets" in section 325 be amended by striking out the semicolon at the end thereof and adding a colon and the following:

*Provided, That in the case of capital invested in stock of a foreign corporation a part thereof shall be deemed inadmissible assets equal to the part of the dividends deductible under the provisions of paragraph 6 of subdivision (a) of section 234;*

**Section 226. Returns when accounting period changes.**

Section 226 provides for returns of income for fractional parts of years in cases in which there is a change from fiscal year to calendar year, calendar year to fiscal year, or one fiscal year to another, and in cases of the first income tax returns of taxpayers. By section 239 the provisions of this section are made applicable to corporations. Section 226 provides for a corresponding reduction of credits in the case of individuals and section 239 in the case of corporations. Provisions for reduction of war and excess-profits credits are contained in sections 305 and 311. Section 326 contains a provision with respect to invested capital which effects a proper adjustment of the rates of profits taxes in cases of fractional parts of years. There is, however, no provision in the case of individuals, which adjusts the rates of surtaxes in cases of fractional parts of years.

It has been suggested that provision should also be made for the adjustment of the rates of surtaxes in the cases of individuals making return for fractional parts of years.

It is urged in support of this suggestion that an individual who makes a return for a fractional part of a year secures a lower rate of surtax than would be applied to him if he made return for an entire year.

It has been suggested that this change could be accomplished by an amendment in substantially the following form:

Amend section 226 by adding at the end thereof a new paragraph as follows:

*In the case of a return for a fractional part of a year the surtax shall be such part of a surtax computed upon an amount twelve times the average monthly income for the fractional part of the year included in the return as the number of months in such period is of twelve months.*

**Section 233. For suggestions relating to this section see suggestions under section 213.**

**Section 234. For suggestions relating to this section, see suggestions under sections 214 and 216.**

**Section 234 (a) (3). Taxes paid by obligors of tax-free covenant bonds deductible as interest.**

The Treasury Department in article 31, regulations 45, in defining what shall be included in gross income, requires that the amount of income tax paid for a bondholder by an obligor pursuant to a tax-free covenant in its bonds is in the nature of additional interest paid the bondholder and must be included in his gross income.

Inasmuch as the corporation is prohibited by statute from deducting the amounts so paid on tax-free covenant bonds and the recipient of the interest is required to take up the amount so paid as additional income, it is suggested that the proviso in paragraph 3 of subdivision (a) of section 234 should be amended to permit the corporation to deduct the amounts paid on account of its tax-free covenant bonds as interest paid. The corporation not being entitled to deduct these amounts pays income, war-profits, and excess-profits taxes on such amounts, and the individual is required to take them up and pay both normal and additional taxes. In this way it is suggested that the Government is receiving the normal tax twice on the same item of income.

It has been suggested that this change can be accomplished by an amendment in substantially the following form:

Amend paragraph 3 of subdivision (a) of section 234 by striking out the semicolon at the end thereof and inserting a comma and the following: "*but such tax may be deducted by the obligor as interest;*"

**Section 250 (d). Limitation upon the reexamination and amendment of income tax-returns.**

This section of the law has been held by the department to impose a five-year limitation upon the assessment or reopening of income taxes, and upon the beginning of any suit or proceeding for the collection of any income tax, only to taxes due under the revenue act of 1918 and not to taxes due under prior income tax laws.

It has been suggested that it would be expedient to extend this limitation to taxes due under all income tax laws which have been imposed, except in the case of false or fraudulent returns, as now provided with respect to the taxes due under the revenue act of 1918.

It has been suggested that this change could be accomplished by an amendment in substantially the following form:

Strike out subdivision (d) of section 250 and insert in lieu thereof:

(d) Except in the case of false or fraudulent returns with intent to evade the tax, the amount of tax due under any return *under this or prior acts* shall be determined and assessed by the Commissioner within five years after the return was due or was made, and no suit or proceeding for the collection of any tax shall be begun after the expiration of five years after the date when the return was due or was made. In the case of such false or fraudulent returns, the amount of tax due may be determined at any time after the return is filed, and the tax may be collected at any time after it becomes due.

**Section 250 (e). Interest payment rate of one-half per cent per month and abatement of 5 per cent penalty in the case of bona fide claims for abatement made applicable to claims still pending under prior acts.**

There are a few income tax cases of bona fide claims for abatement still pending under prior acts.

It has been suggested that the more liberal rule adopted in the revenue act of 1918 should apply in such cases.

This rule provides that with respect to any amount of income tax which is the subject of a bona fide claim for abatement the 5 per cent penalty shall not attach and the interest from the time the amount was due until the claim is decided shall be at the rate of one-half of 1 per cent per month.

It has been suggested that this change could be accomplished by an amendment in substantially the following form:

Strike out the first paragraph of subdivision (e) of section 250 and insert the following:

(e) If any *income* tax *under this or prior acts* remains unpaid after the date when it is due, and for ten days after notice and demand by the collector, then, except in the case of estates of insane, deceased, or insolvent persons, there shall be added as part of the tax the sum of 5 per centum on the amount due but unpaid, plus interest at the rate of 1 per centum per month upon such amount from the time it became due: *Provided*, That as to any such amount which is the subject of a bona fide claim for abatement such sum of 5 per centum shall not be added and the interest from the time the amount was due until the claim is decided shall be at the rate of one-half of 1 per centum per month.

## TITLE III—WAR-PROFITS AND EXCESS-PROFITS TAX.

**Section 302. Adjustment of the limitation provided by this section in the case of returns covering less than twelve months.**

Doubt exists whether, in the application of section 302, the limits or brackets of $3,000 and $20,000, respectively, should be reduced when the taxpayer makes return for less than one year. If such reduction be not made, a discriminatory advantage is conferred on the taxpayer who makes return for less than 12 months. In order to set this doubt at rest it has been suggested that there be inserted in section 302 a specific statement to the effect that if the return is made for less than 12 months, the limiting amounts of $3,000 and $20,000 as used in this section shall be correspondingly or proportionately reduced.

It has been suggested that this change could be accomplished by an amendment in substantially the following form:

Amend section 302 by adding a new paragraph at the end thereof, as follows:

> *In cases in which a return is made for less than a twelve-month period, the limiting amounts of $3,000 and $20,000 as used in this section shall be reduced to an amount equal to the same number of twelfths of such limiting amounts as the number of calendar months for which the return is made.*

**Section 325. For suggestions relating to this section, see suggestions under section 216.**

**Section 326 (a) (3). Federal income and excess profits taxes in computation of invested capital.**

This section of the law provides that in computing invested capital there may be included therein the "paid in or earned surplus and undivided profits; not including surplus and undivided profits earned during the year." The interpretation placed upon the statute by the Treasury Department is that for the purpose of computing invested capital, Federal income and war profits and excess profits taxes are deemed to have been paid out of the net income of the taxable year for which they are levied, and that amounts payable on account of such taxes for the preceding year may be included in the computation of invested capital only until such taxes become due and payable.

It has been suggested that this interpretation of the Treasury Department should be included in the law in order to remove all doubt as to the legislative intent.

It has been suggested that this change can be accomplished by an amendment in substantially the following form:

Amend paragraph (3) of subdivision (a) of section 326 by striking out the semicolon and inserting a colon and the following:

*Provided, That amounts payable on account of income and war profits and excess profits taxes for the preceding year may be included in computing surplus and undivided profits only for the proportionate part of the year represented by the period of time between the close of such preceding year and the date or dates upon which such taxes become due and payable;*

## TITLE IV—ESTATE TAX.

**Section 402 (c). Transfer of property in contemplation of death.**

This paragraph of the law provides for the inclusion in the gross estate of a decedent of the value of property of which he has made transfer "in contemplation of death."

It has been suggested that this part of the law should be amended in the following three ways:

1. By defining the words "contemplation of death" in the manner in which these words are defined in the California statute. The California statute reads as follows:

> The words "contemplation of death," as used in this act, shall be taken to include that expectancy of death which actuates the mind of a person on the execution of his will, and in nowise shall said words be limited and restricted to that expectancy of death which actuates the mind of a person making a gift *causa mortis;* and it is hereby declared to be the intent and purpose of this act to tax any and all transfers which are made in lieu of or to avoid the passing of property transferred by testator or intestate laws. (Stats. of Cal. 1913, chap. 595, sec. 1, subd. (f).)

Nevada has a similar statute (Stats. of Nev., 1913, chap. 266, sec. 30).

2. To extend the present prima facie presumption of taxability so as to include transfers made within six years of the decedent's death.

Wisconsin has a statute of this kind. It reads as follows:

> A tax shall be, and is hereby, imposed upon any transfer of property, real, personal, or mixed, or any interest therein, or income therefrom in trust or otherwise, to any person, association, or corporation, within the State. * * *
>
> When the transfer is of property made by a resident or by a nonresident when such nonresident's property is within this State, or within its jurisdiction, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death. Every transfer by deed, grant, bargain, sale or gift, made within six years prior to the death of the grantor, vendor or donor, of a material part of his estate, or in the nature of a final disposition or distribution thereof, and without an adequate valuable consideration, shall be construed to have been made in contemplation of death within the meaning of this section. (Stats. of Wis., chap. 48b, sec. 1087.)

3. To make absolute the presumption that any transfer has been made in contemplation of death if the conveyance was made within two years of death.

Indiana has a statute of this kind. It reads as follows:

> *Provided,* That any conveyance, gift, or transfer made within two years of the death of any decedent, without consideration, save and except love and affection, shall be conclusively presumed to have been made in contemplation of death. (Burns's Ann. Ind. Stats., sec. 10143a, subd. 4.)

It has been suggested that these changes could be accomplished by an amendment in substantially the following form:

Strike out subdivision (c) of section 402 and insert:

(c) To the extent of any interest therein of which the decedent has at any time made a transfer, or with respect to which he has at any time created a trust, in contemplation of or intended to take effect in possession or enjoyment at or after his death (whether such transfer or trust is made or created before or after the passage of this Act), except in case of a bona fide sale for a fair consideration in money or money's worth. ~~Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such a consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title;~~

*The words "contemplation of death," as used in this section, shall be taken to include that expectancy of death which actuates the mind of a person on the execution of his will, and in nowise shall such words be limited and restricted to that expectancy of death which actuates the mind of a person making a gift causa mortis; and it is hereby declared to be the intent and purpose of this title to tax any and all transfers which are made in lieu of or to avoid the passing of property transferred by testate or intestate laws. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within six years prior to his death, except in the case of a bona fide sale for a fair consideration in money or money's worth, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title. Any transfer made within two years of the death of any decedent without consideration, save and except love and affection, shall be conclusively presumed to have been made in contemplation of death;*

## TITLE VI—TAX ON BEVERAGES.

**Section 600. Distilled spirits withdrawn for nonbeverage purposes and diverted to beverage uses.**

It has been suggested that this section of the law be amended so as to provide specifically that in cases in which distilled spirits are withdrawn and tax paid for nonbeverage uses and diverted to beverage uses an additional tax of $4.20 (the difference between the beverage and the nonbeverage rate) shall be imposed upon such spirits.

It is believed that flavoring extracts, patent and proprietary medicines, antiseptic solutions, cosmetics and toilet articles, and many similar preparations have been sold in large quantities in prohibition territory to be used as beverages.

It has been suggested that this change could be accomplished by an amendment in substantially the following form:

Amend subdivision (a) of section 600 by striking out the period at the end thereof and inserting a colon and the following:

*'Provided, That an additional tax of $4.20 on each proof gallon, and a proportionate tax at a like rate on all fractional parts of such proof gallon, shall be levied and collected on all distilled spirits withdrawn and tax paid at $2.20 per proof gallon for use for nonbeverage purposes, and which are shown to have been sold or used (1) for beverage purposes, or (2) in violation of any regulations governing the sale and use of nonbeverage spirits prescribed by the Commissioner, with the approval of the Secretary, or which are shown to have been used in the manufacture of any article used or intended to be used for beverage purposes, containing one-half of 1 per centum or more of alcohol by volume.*

**Section 600. One hundred thousand dollars limit proposed in the case of distillery warehouse bonds.**

It has been suggested that distillery warehousing bonds prescribed in section 3293 of the Revised Statutes, as amended, should be limited in amount to not in excess of $100,000, on the grounds that the rates of tax on distilled spirits having been greatly increased the distillers have difficulty in inducing surety companies to obligate themselves on such bonds, and that it is improbable that any distiller will hereafter be in position to fraudulently remove a sufficient quantity of spirits from any warehouse to exceed the security afforded to the Government by a bond in the sum of $100,000.

It has been suggested that this change could be accomplished by an amendment in substantially the following form:

Amend section 600 by adding at the end thereof a new subdivision, as follows:

(d) *Distillery warehousing bonds prescribed in section 3293 of the Revised Statutes, as amended, conditioned for the payment of tax on the spirits entered into the distillery warehouse, shall be in a penal sum not less than the amount of the tax on such distilled spirits, but in no case will any new warehousing bond be required in a penal sum in excess of $100,000.*

**Section 620. Disposition of violations of wine tax provisions by the assertion of tax and penalty in lieu of prosecution.**

It has been suggested that this section of the law be amended so as to leave no doubt as to the power of the Commissioner of Internal Revenue to assess the tax and 200 per cent penalty before conviction has been had in court in cases of willful evasion, as is similarly provided in section 23 of the Revenue Act of 1914, in section 1004 of the Revenue Act of 1917, and in section 605 of the Revenue Act of 1918.

It has been suggested that this change could be accomplished by an amendment in substantially the following form:

Strike out section 620 and insert:

"SEC. 620. That whoever evades or attempts to evade any tax imposed by sections 611 to 615, both inclusive, or any requirement of sections 610 to 621, both inclusive, or regulation issued pursuant thereto, or whoever, otherwise than as provided in such sections, recovers or attempts to recover any spirits from domestic or imported wine, or whoever rectifies, mixes, or compounds with distilled spirits any domestic wines, other than in the manufacture of liqueurs, cordials, or similar compounds, shall~~, on conviction, be punished for each such offense by a fine of not exceeding $5,000, or imprisonment for not more than five years, or both, and in addition thereto by a penalty of double the tax evaded, or attempted to be evaded, to be assessed and collected in the same manner as taxes are assessed and collected,~~ *be liable to a penalty of double the tax evaded, or attempted to be evaded, together with the tax, to be assessed and collected in the same manner as taxes are assessed and collected, and in addition thereto shall, on conviction, be punished for each such offense by a fine of not exceeding $5,000, or imprisonment for not more than five years, or both,* and all wines, spirits, liqueurs, cordials, or similar compounds as to which such violation occurs shall be forfeited to the United States. But the provisions of this section and the provisions of section 3244 of the Revised Statutes, as amended, relating to rectification, or other internal-revenue laws of the United States, shall not be held to apply to or prohibit the mixing or blending of wines subject to tax under the provisions of sections 611 to 615, both inclusive, with each

other or with other wines for the sole purpose of perfecting such wines according to commercial standards: *Provided,* That nothing herein contained shall be construed as prohibiting the use of tax-paid grain or other ethyl alcohol in the fortification of sweet wines as defined in section 610 of this Act and section 43 of the act entitled 'An Act to reduce the revenue and equalize duties on imports, and for other purposes,' approved October 1, 1890, as amended by this Act."

**Section 628. Exemption from tax of the amount paid for containers of taxable beverages.**

This section imposes a tax on certain beverages which is necessarily imposed on the selling price, including the price of the container. In cases in which the containers are returned to the manufacturer by the purchaser and refund made by the manufacturer to the purchaser the department allows a refund of the tax paid on this portion of the selling price.

It has been suggested that the law be amended to specifically exempt from tax the selling price of the container provided the selling price of the container is billed to the purchaser separately from the price of the beverage.

It has been suggested that this change could be accomplished by an amendment in substantially the following form:

Add a new paragraph at the end of section 628 as follows:

(c) *In the case of any beverage specified in this section, if the beverage is sold under an agreement by which the manufacturer is to refund the purchaser a specified amount upon the return of the ccontainer, the tax shall be computed upon the selling price of the beverage if the selling price of the beverage and container are billed to the purchaser separately. In such cases the selling price of the container shall not be billed at an amount in excess of the refund to be allowed on the return of the container.*

**Section 630. Taxability and nontaxability of articles of food or drink defined. The terms "other similar place of business," "in or in proximity to the place of business," and "amount paid" defined. Proprietors of soda fountains, ice cream parlors, and other similar places of business required to furnish purchaser a ticket indicating amount paid and tax separately.**

This section imposes a tax on the amount paid to any person conducting a soda fountain, ice-cream parlor, or other similar place of business for soft drinks, ice cream, and similar articles.

In the administration of section 630 it has been necessary for the Treasury Department to define taxable and nontaxable articles under this section, and the terms "other similar place of business," "in or in proximity to the place of business," and "amount paid."

It has been suggested that in the interest of certainty these definitions as indicated in the suggested amendment should be incorporated in the Revenue Act of 1918.

It has been suggested that this tax would be paid more willingly if means were provided for the certain collection of the tax by the Government and that to this end proprietors of soda fountains and other similar places of business should be required to furnish the purchaser a ticket indicating the amount paid and the tax separately, and that these tickets be serially numbered.

It has been suggested that these changes could be accomplished by amendments in substantially the following form:

Amend section 630 by adding the following six new paragraphs at the end thereof:

*The term "similar articles of food or drink"—*

(a) *Includes such articles as orangeade, lemonade, pineapple juice, coca-cola, root beer, moxie, phosphates, fruit and flavoring sirups compounded or mixed with plain or carbonated water, milk shakes in any form, cream and egg shakes, ice cream sandwiches, and ice cream cones; but*

(b) *Does not include such articles as beef tea, coffee, tea, buttermilk, milk, hot chocolate or cocoa, clam broth, clam bisque, tomato bouillon, bromo seltzer, citrate of magnesia, rochelle salts, seidlitz powders, bicarbonate of soda, castor oil, epsom salts, and essence of pepsin;*

*The term "other similar place of business" shall be deemed to refer primarily to the character of the business transacted rather than to any physical resemblance to the place where the business is done;*

*The container used to convey any article taxable under this section shall be the primary test in determining whether or not the article is to be consumed "in or in proximity to the place of business";*

*Sales of articles taxable under this section shall not be subject to tax when made in the regular course of business at a hotel, restaurant, cafeteria, lunch room, or club house, unless such articles are sold separate and apart from meals. Ice cream sold with any substantial article of food at such places shall not be subject to tax. All sales of such articles at a soda fountain or in an ice cream parlor shall be subject to tax even though sold as a part of a meal.*

*The term "amount paid" as used in this section means the entire amount paid by the purchaser and not the amount paid for each separate article of food or drink.*

*Every person conducting a soda fountain, ice cream parlor, or other similar place of business shall provide serially numbered tickets to evidence separately the amount and tax paid for articles liable to tax under this section. The Commissioner, with the approval of the Secretary, is hereby authorized to make all necessary regulations to carry into effect the provisions of this paragraph.*

## TITLE VII—TAX ON CIGARS, TOBACCO, AND MANUFACTURES THEREOF.

**Section 704. Dealers in leaf tobacco.**

The following five suggestions for changes in this section have been made:

1. That the issue by collectors and the posting by dealers in leaf tobacco of certificates setting forth the place of business and the dealers' places of storage shall be made under such rules and regulations as the Commissioner of Internal Revenue shall prescribe, instead of in the manner now prescribed by this section of the law.

2. That the time for filing inventories be changed from January to July, as generally desired by the tobacco trade.

3. That a dealer in leaf tobacco be permitted to ship to another dealer in the same commodity in order to recognize the trade practices.

4. That the maximum penalty for violations of this section be increased from $500 to $5,000 to make this section of the law agree with the penalty prescribed by section 3360 of the Revised Statutes before amendment by section 704 of the revenue act of 1918.

5. That the definition of "dealer in leaf tobacco" be extended to include every person operating a tobacco storage warehouse, rehandling plant, or stemmery, and every exporter of leaf tobacco.

It has been suggested that these changes could be accomplished by amendments in substantially the following form:

Strike out the last paragraph of subdivision (a) of section 704 and insert:

> Every such dealer shall be assigned a number by the collector of the district, which number shall appear in every inventory, invoice and report rendered by the dealer, ~~who shall also obtain certificates from the collector of the district setting forth the place where his business is carried on and the places designated by the dealer as the places of storage of his tobacco, which certificates shall be posted conspicuously within the dealer's registered place of business, and within each designated place of storage~~ *and certificates setting forth the dealer's registered place of business and the place where tobacco is stored by him shall be issued by the collector of the district and shall be posted or kept by each dealer under such rules and regulations as the Commissioner shall prescribe.*

Strike out the first paragraph of subdivision (b) of section 704 and insert:

(b) Every dealer in leaf tobacco shall make and deliver to the collector of the district a true inventory of the quantity of the different kinds of tobacco held or owned, and where stored by him, on the first day of ~~January~~ *July* of each year, or at the time of commencing and at the time of concluding business, if before or after the first day of ~~January~~ *July*, such inventory to be made under oath and rendered in such form as may be prescribed by the Commissioner.

Strike out the first paragraph of subdivision (c) of section 704 and insert:

(c) Sales or shipments of leaf tobacco by a dealer in leaf tobacco shall be in quantities of not less than a hogshead, tierce, case, or bale, except loose leaf tobacco comprising the breaks on warehouse floors, and except to a duly registered manufacturer of cigars for use in his own manufactory exclusively, *or to another dealer in leaf tobacco.*

Strike out paragraph (3) of subdivision (e) of section 704 and insert:

(3) Who fraudulently omits to account for tobacco purchased, received, sold or shipped; shall be fined not less than $100 or more than ~~$500~~ *$5,000,* or imprisoned not more than one year, or both.

Strike out subdivision (f) of section 704 and insert:

(f) For the purposes of this section a farmer or grower of tobacco shall not be regarded as a dealer in leaf tobacco in respect to the leaf tobacco produced by him, *but every person operating a tobacco storage warehouse, rehandling plant, or stemmery and every exporter of leaf tobacco shall be regarded as a dealer in leaf tobacco.*

## TITLE VIII—TAX ON ADMISSIONS AND DUES.

**Section 800. Admissions by season ticket or subscription.**

It has been suggested that the law should be amended to provide that the established price for a season ticket or subscription shall be deemed not to be an admission at reduced rates.

It has been suggested that this change could be accomplished by an amendment as follows:

Amend paragraph (2) of subdivision (a) of section 800, by adding at the end thereof after the word "admitted" a colon and the following:

*Provided. That the established price for single admissions by season ticket or subscription shall not be deemed to be a reduced rate within the meaning of this subdivision*

## TITLE IX—EXCISE TAXES.

**Section 900 (3). Tax on tires, inner tubes, automobile parts and accessories.**

This subdivision provides a tax on tires, inner tubes and automobile parts and accessories sold or leased by manufacturers, producers or importers.

It has been suggested that manufacturers of automobiles should be declared by law to be manufacturers of tires, inner tubes, parts and accessories which are purchased and resold by them, because it is impracticable to keep separate records of the parts and accessories which are actually manufactured and which are purchased from other manufacturers.

It has been suggested that this change could be accomplished by an amendment in substantially the following form:

Strike out subdivision (3) of section 900 and insert:

(3) Tires, inner tubes, parts, or accessories, ~~for any of the articles enumerated in subdivision (1) or (2),~~ *for automobile trucks, automobile wagons, other automobiles, or motor cycles,* sold to any person other than a manufacturer or producer of ~~any of the articles enumerated in subdivision (1) or (2),~~ *automobile trucks, automobile wagons, other automobiles, or motor cycles,* 5 per centum. *In the case of all sales of tires, inner tubes, parts or accessories by a manufacturer or producer of automobile trucks, automobile wagons, other automobiles, motor cycles, tires, inner tubes, parts or accessories (other than to another manufacturer or producer) such manufacturer or producer shall be deemed the manufacturer or producer thereof;*

**Section 900 (7). Cameras and lenses.**

This paragraph imposes an excise tax of 10 per cent on the price for which cameras weighing not more than 100 pounds are sold or leased by manufacturers, producers, or importers.

It has been suggested that this tax should be extended to lenses sold separately; and that this change could be accomplished by an amendment in substantially the following form:

Strike out subdivision (7) of section 900 and insert:

Cameras, weighing not more than 100 pounds, *and lenses,* 10 per centum;

**Section 900 (9). Tax on candy.**

This subdivision imposes a tax on candy sold by the manufacturer, producer, or importer.

It has been suggested that the term "candy" should be defined.

The following definition of the term "candy" is suggested:

Strike out subdivision (9) and insert:

Candy, 5 per centum. *Candy within the meaning of this subdivision—*

(a) *Includes chocolate creams, bonbons, gum drops, jelly drops, jelly beans, imperials, caramels, stick candy, lozenges, taffies, candy kisses, wafers, fudges or Italian creams, nougats, peanut brittle, sugared almonds, chocolate covered fruits and nuts, glacé or candied fruits and nuts not specified in paragraph (b) of this subdivision, pop corn and other cereals or cereal products not specified in paragraph (b) of this subdivision, mixed with or covered with molasses, sugar or other sweetening agent, hard candies, plain and chocolate covered marshmallows, sweetened licorice not taxed as cough drops under section 907, sweet chocolate and sweet milk chocolate whether plain or mixed with fruit or nuts; and all similar articles however designated; but*

(b) *Does not include cereal breakfast foods, cake, and pastries, bitter chocolate which needs the addition of sugar before it becomes pleasing to the taste, nor glacé or candied fruits purchased for and used in the manufacture of food products, such as ice cream, cakes, and pastries;*

**Section 900 (19). Tax on articles made of fur.**

This subdivision imposes a tax on articles made of fur on the hide or pelt.

It has been suggested that the interpretation of the Treasury Department contained in article 31, of regulations 47, should be confirmed by legislation. This article reads as follows:

"Raw, dressed, and dyed skins are not subject to the tax when sold to a manufacturer for use in the manufacture of fur articles. Such skins, however, are subject to the tax when sold to a consumer. * * * The 'component material of chief value' of any article is that component material which is not exceeded in value by any other single component material."

It has been suggested that this change could be accomplished by an amendment in substantially the following form:

Strike out subdivision (19) of section 900 and insert:

(19) Articles made of fur on the hide or pelt, or of which any such fur is the component material of chief value, 10 per centum. *Raw, dressed, and dyed skins shall not be subject to the tax when sold to a manufacturer for use in the manufacture of fur articles, but such skins shall be subject to the tax when sold to any other*

*person. The "component material of chief value" of any article means that component material which is not exceeded in value by any other single component material;*

**Section 900. Manufacturer who customarily sells both at wholesale and retail.**

The paragraph next to the last paragraph of this section provides:

If any manufacturer, producer, or importer of any of the articles enumerated in this section customarily sells such articles both at wholesale and at retail, the tax in the case of any article sold by him at retail shall be computed on the price for which like articles are sold by him at wholesale.

It has been suggested that this paragraph works a hardship on small manufacturers who are able only to engage in retail business and that an injustice is done to a greater number of taxpayers through the operation of this provision than would be the case if every taxpayer under this section were required to pay tax on the basis of the selling price in the case of every transaction, and that, therefore, this paragraph should be repealed.

This change could be accomplished by an amendment in substantially the following form:

Strike out the next to the last paragraph of section 900 which reads as follows:

~~If any manufacturer, producer, or importer of any of the articles enumerated in this section customarily sells such articles both at wholesale and at retail, the tax in the case of any article sold by him at retail shall be computed on the price for which like articles are sold by him at wholesale.~~

**Section 902. Sculpture, paintings, statuary, art porcelains, and bronzes.**

Articles on which tax is imposed by this section have been defined by the Treasury Department and it has been suggested that these definitions should be reviewed by Congress and incorporated, with whatever revision may be deemed necessary, in the law.

It has been suggested that these articles should be taxed only in the case of sales for consumption or use and that the exemption provided in this section for the benefit of educational institutions should be extended to all corporations organized and operated exclusively for religious, charitable, scientific, or educational purposes, provided no part of the net income of such corporations inures to the benefit of any private stockholder or individual.

It has been suggested that these changes could be accomplished by an amendment in substantially the following form:

Strike out section 902 and insert:

SEC. 902. That there shall be levied, assessed, collected, and paid upon sculpture, paintings, statuary, art porcelains, and bronzes, sold by any person other than the artist *for consumption*

*or use*, a tax equivalent to 10 per centum of the price for which so sold. This section shall not apply to the sale of any such article to ~~an educational institution or~~ *a* public art museum *or a corporation organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual.*

*The term "sculpture" as used in this section means any production, such as statues, statuettes, figures, figurines, groups, busts, haut or bas reliefs, plaques, pedestals, vases, flower bowls or holders, umbrella stands, jardinieres, brackets, fountains, sundials, book ends, paper weights, cabinet pieces or curios, and the numerous articles included within the term bric-a-brac (whether antique or modern, and whether original, replica, copy, or reproduction) which is cut or carved by hand from marble, stone, alabaster, agate, crystal, jade, lapis lazuli, or other semiprecious stone, terra cotta, ivory, bone, wood, clay, wax, metal, or any other substance, and which is of such a character that the use to which under general custom or ordinary usage it should be put (irrespective of the use to which the purchaser intends to put it), is entirely or principally an ornamental or decorative one as distinguished from a useful or utilitarian one.*

*The term "sculpture" does not include (a) such articles as are in the nature of material, work, or labor furnished in connection with the erection or construction of a building and which form an integral part thereof, or (b) cut glassware or engravings on metal, wood, shell, stone, or other substance, or (c) furniture, altars, candlesticks, chandeliers, railings, gates, doors, or other articles designed primarily for a useful purpose.*

*The term "paintings" as used in this section means any pictures, images, likenesses, scenes, designs, or sketches, wholly or in part in oil, mineral, water, or other colors on canvas or other textile, wood, paper, metal, plaster, or other material, (a) whether antique or modern, (b) whether originals, replicas, copies, or reproductions, and (c) whether or not intended for reproduction by printing or other processes.*

*The term "paintings" does not include (1) such as are in the nature of work or labor furnished in connection with the erection or construction of a building and which form an integral part thereof; (2) furniture, windows, tableware, toilet articles, glove, handkerchief, candy, or other fancy boxes, menu, place, greeting, and similar cards, stationery, candlesticks, signs, placards, desk fittings, and other articles of utility when the same are ornamented or decorated with oil, mineral, water, or other colors; (3) such as are produced wholly or in part by stenciling, printing, or other mechanical process; and (4) pastels or drawings. The term "drawings" as*

*used in this paragraph means only pictures, images, likenesses, scenes, designs, or sketches produced by means of lines.*

*The term "statuary," as used in this section, means any production (whether antique or modern and whether original, replica, copy, or reproduction) cut, carved, or otherwise wrought by hand from marble, stone, alabaster, agate, crystal, jade, lapis lazuli, or other semiprecious stone, terra cotta, ivory, bone, wood, clay, wax, metal, or other substance, when such production is a representation in the round of the human or animal form (irrespective of size), whether real, mythical, fabulous, or allegorical.*

*The term "statuary" does not include (a) such productions as are in the nature of material, work, or labor furnished in connection with the erection or construction of a building and which form an integral part thereof, (b) dolls or toys, or (c) such productions as are designed for a primarily useful purpose.*

*The term "art porcelains," as used in this section, means that class of articles, such as statues, statuettes, figures, figurines, groups, busts, haut or bas reliefs, plaques, pedestals, vases, flower bowls or holders, jardinieres, brackets, fountains, sundials, cabinet pieces or curios, and the numerous articles included within the term bric-a-brac, by whatever process made, when such articles are made wholly or in chief value (a) of any ceramic production of translucent ware, of hard or soft paste, whether vitrified or semivitrified, by whatever name known; or (b) of that which is commonly or commercially known as porcelain, in either case, whether or not decorated, colored, or ornamented, whether modern or antique, and whether originals, replicas, copies, or reproductions, which are of such a character that the use to which under general custom or ordinary usage they should be put (irrespective of the use to which the purchaser intends to put them) is entirely or principally an ornamental or decorative one as distinguished from a useful or utilitarian one.*

*The term "art porcelains" does not include (a) such articles as are in the nature of material, work, or labor furnished in connection with the erection or construction of a building and which form an integral part thereof, (b) tableware or other articles designed for a primarily useful purpose, or (c) such articles as are duplicated by the manufacturer in commercial quantity wholly or chiefly by the ordinary mechanical process of manufacture. Articles shall not be deemed to be duplicated in commercial quantity unless they are ordinarily sold by the manufacturer in quantities of not less than a dozen.*

*The term "bronzes," as used in this section, means that class of articles such as statues, statuettes, figures, figurines, groups, busts, haut or bas reliefs, plaques, pedestals, vases, flower bowls or holders, umbrella stands, jardinieres, brackets, fountains, sundials, book ends, paper weights, cabinet pieces or curios, and the numerous*

*articles included within the term bric-a-brac, by whatever process made, when such articles are made wholly or in chief value of that substance which is commonly or commercially known as bronze, whether such articles are modern or antique, and whether originals, replicas, copies, or reproductions, which are of such a character that the use to which under general custom or ordinary usage they should be put (irrespective of the use to which the purchaser intends to put them) is entirely or principally an ornamental or decorative one as distinguished from a useful or utilitarian one.*

*The term "bronzes" does not include (a) architectural bronzes, (b) such articles as are in the nature of material, work, or labor furnished in connection with the erection or construction of a building and which form an integral part thereof, (c) medals, memorial or commemorative tablets, or (d) such articles as are designed for a primarily useful purpose. The sale to an artist by a foundry of a casting made from the artist's model shall not be subject to the tax.*

**Section 905. Articles made of, or ornamented, mounted or fitted with, precious metals or imitations thereof.**

It has been suggested that the interpretations placed on this provision by the department should be confirmed by legislation. The department has held that Congress did not intend to tax such articles as railroad coaches or coffins, although such articles might have fixtures of precious metals. The department has also ruled that the term "precious metals" was intended to include only silver, gold, platinum or metals of greater value and that the term "imitation thereof" was intended to include only platings or alloys of these materials.

It has been suggested that this change could be accomplished by an amendment in substantially the following form:

Strike out the first paragraph of section 905 and insert:

SEC. 905. That on and after April 1, 1919, there shall be levied, assessed, collected, and paid (in lieu of the tax imposed by subdivision (e) of section 600 of the Revenue Act of 1917) upon all articles commonly or commercially known as jewelry, whether real or imitation; pearls, precious and semiprecious stones, and imitation thereof; articles (*designed for personal use or adornment or for ornament or display in connection with the home*) made of, or ornamented, mounted or fitted with, precious metals or imitations thereof or ivory (not including surgical instruments, *articles made of imitation ivory or ornamented or overlaid with gold or silver leaf or paint, such as picture frames, books, christmas cards, glassware, china and pottery*); watches; clocks, opera glasses; lorgnettes, marine glasses; field glasses; and binoculars; upon any of the above when sold by or for a dealer or his estate for consumption or use, a tax equivalent to 5 per centum of the price for which so sold.

## TITLE X—SPECIAL TAXES.

**Section 1000. Extension of time for filing capital stock tax return.**

Many corporations have of necessity been granted extensions of time in filing income and excess-profits and war-profits tax returns and claim the same data is used in preparing capital stock tax returns, and for that reason insist that it is impossible to properly file the capital stock tax return within the prescribed time under the law. The difficulty seems to be due to the fact that the capital stock tax return requires under Exhibit C the net income reported for the Federal income tax, and until this data is available Exhibit C can not be computed. Many requests for extension of time in filing the capital stock tax return are received from foreign corporations whose principal offices are located outside of the United States.

It has been suggested that the commissioner should be authorized to grant an extension of time for filing a capital stock tax return whenever an extension of time is granted to the same corporation for filing its income and excess-profits and war-profits tax return.

It has been suggested that this change could be accomplished by an amendment in substantially the following form:

Amend section 1000 by adding a new subdivision as follows:

(e) *The Commissioner may grant a reasonable extension of time for filing returns under this section whenever in his judgment good cause exists and shall keep a record of every such extension and the reason therefor. Except in the case of taxpayers who are abroad, no such extension shall be for more than six months.*

**Section 1001. (12) Dealers in malt liquors containing one-half per centum or more of alcohol liable to $1,000 special tax.**

This paragraph of the law imposes a special tax of $1,000 on every person carrying on the business of a brewer, distiller, wholesale liquor dealer, retail liquor dealer, wholesale dealer in malt liquor, retail dealer in malt liquor, or manufacturer of stills, as defined in section 3244 as amended, and section 3247 of the Revised Statutes, in any State, Territory, or district of the United States contrary to the laws of such State, Territory, or district, or in any place therein in which carrying on such business is prohibited by local or municipal law.

It has been suggested that the definitions in the Revised Statutes are not dependent upon the alcoholic content of the liquor produced or sold by persons engaged in the occupations which are defined, and that under the literal language of the Revised Statutes and of this section it is necessary, in order that a given business may be regarded as prohibited by local or municipal law, that such law prohibit the sale of any liquor whatever, even though absolutely non-

alcoholic. The amendment indicated for the carrying out of this suggestion would be to specify that the tax of $1,000 should apply to those persons engaged in the specified occupations who sell liquor containing one-half of 1 per cent or more of alcohol by volume, or who manufacture or sell stills of a kind or for a purpose in violation of the laws of the United States or of any State, Territory, or district.

It has been suggested that these changes could be accomplished by an amendment in substantially the following form:

Strike out subdivision (12) of section 1001 and insert:

> Every person carrying on the business of a brewer, distiller, wholesale liquor dealer, retail liquor dealer, wholesale dealer in malt liquor, retail dealer in malt liquor, or manufacturer of stills, as defined in section 3244, as amended, and section 3247 of the Revised Statutes, *and who sells liquor containing one-half of one per cent or more of alcohol by volume, or who manufactures or sells stills, worms, or condensers or other apparatus designed for distilling liquor, or for a purpose* ~~in any State, Territory, or district of the United States contrary to~~ *in violation of* the laws of ~~such~~ *the United States or any* State, Territory or district *of the United States* or in any place therein in which *the* carrying on *of* such business is prohibited by *Federal, State,* local, or municipal law, shall pay, in addition to all other taxes, special or otherwise, imposed by existing law or by this Act, $1,000 *for each of such occupations when so prohibited.*

**Section 1002. Receipt in lieu of a special tax stamp imposed in the case of (1) manufacturers of tobacco whose annual sales exceed 200,000 pounds, (2) manufacturers of cigars whose annual sales exceed 400,000 cigars, and (3) all manufacturers of cigarettes.**

The special-stamp tax upon manufacturers of tobacco whose annual sales exceed 200,000 pounds is $24 plus an additional amount equal to 16 cents per thousand pounds or fraction thereof in respect to the excess of 200,000 pounds and in the case of manufacturers of cigars whose annual sales exceed 400,000 cigars is $24 plus an amount equivalent to 10 cents per thousand cigars or fraction thereof in respect to the excess of 400,000 cigars, and in the case of manufacturers of cigars in an amount computed at the rate of 6 cents for every 10,000 cigarettes or fraction thereof. The result is that it is necessary for the Treasury Department to print a very few special tax stamps for such manufacturers of many denominations and at a considerable expense. A receipt could be issued in each of such cases which could be placed in the place of business of such manufacturer in the same manner in which a stamp is now placed there and which would answer the same purpose at much less expense to the Government.

It has been suggested that these changes could be accomplished by amendments in substantially the following form:

(1) Strike out the fifth paragraph of section 1002 and insert:

Manufacturers of tobacco whose annual sales exceed two hundred thousand pounds shall each pay $24, and at the rate of 16 cents per thousand pounds, or fraction thereof, in respect to the excess over two hundred thousand pounds, *but a receipt in lieu of a special tax stamp may be issued to denote the payment of such tax;*

(2) Strike out the tenth paragraph of section 1002 and insert:

Manufacturers of cigars whose annual sales exceed four hundred thousand cigars shall each pay $24, and at the rate of 10 cents per thousand cigars, or fraction thereof, in respect to the excess over four hundred thousand cigars, *but a receipt in lieu of a special tax stamp may be issued to denote the payment of such tax;*

(3) Strike out the eleventh paragraph of section 1002 and insert:

Manufacturers of cigarettes, including small cigars weighing not more than three pounds per thousand shall each pay at the rate of 6 cents for every ten thousand cigarettes, or fraction thereof, *but a receipt in lieu of a special tax stamp may be issued to denote the payment of such tax.*

## TITLE XIII—GENERAL ADMINISTRATIVE PROVISIONS.

**Title XIII (new section). Making dealers in stills subject to fine and imprisonment if they engage in such business without payment of the special tax which has been suggested under section 1322.**

The suggestion that dealers in stills should be made subject to special tax has been accompanied by the suggestion that section 3242a Revised Statutes should be amended to make the penalties provided apply to the proposed class of taxpayers.

It has been suggested that this change could be accomplished by an amendment in substantially the following form:

Amend the Revenue Act of 1918 by adding a new section as follows:

SEC. 1321. That section 3242a of the Revised Statutes, as amended, is hereby amended to read as follows:

> "SEC. 3242a. That any person who shall carry on the business of a rectifier, wholesale liquor dealer, retail liquor dealer, wholesale dealer in malt liquors, retail dealer in malt liquors, ~~or~~ manufacturer of stills, *or dealer in stills*, without having paid the special tax as required by law, or who shall carry on the business of a distiller without having given bond as required by law, or who shall engage in or carry on the business of a distiller with intent to defraud the United States of the tax on the spirits distilled by him, or any part thereof, shall, for every such offense, be fined not less than $100 nor more than $5,000 and imprisoned not less than thirty days nor more than two years.

**Title XIII (new section). Dealers in stills made subject to special tax of $25.**

It has been suggested that dealers in stills should be made subject to a special tax of $25 and that for the more effective enforcement of prohibition the term "still" should be amplified by including the words "condenser, distilling apparatus, or any apparatus designed to be used for the purpose of distilling." It has also been suggested that, under this section of the law, stills to be used for scientific or other legitimate purposes should be specifically exempt from the operation of this section; and that provision should be made in the law requiring all stills and similar apparatus to be marked and stamped to evidence the payment of the tax.

It has been suggested that these changes could be accomplished by an amendment in substantially the following form:

Amend the Revenue Act of 1918 by adding a new section as follows:

SEC. 1322. That the second subdivision of section 3244 of the Revised Statutes, as amended, is hereby amended to read as follows:

Second. *Dealers in stills shall each pay $25. Every person who sells or offers for sale or has in his possession with the intention of selling stills, condensers, worms, distilling apparatus, or any apparatus designed to be used for the purpose of distilling, shall be regarded as a dealer in stills.*

Manufacturers of stills shall each pay $50, and $20 for each still, ~~or~~ worm, *or condenser*, for distilling *spirits* made by him. *Stills so constructed that they can be used for the distillation of spirits will be presumed to be intended for use in distilling spirits, and their manufacturer will be held to incur the tax imposed unless the person for whom it is made by evidence under oath submitted to and filed with the collector removes this presumption by showing that the still is not to be used for the production of spirits and setting forth specifically the actual purposes for which it is to be used.* Any person who manufactures any still, ~~or~~ worm, *or condenser, or distilling apparatus or any apparatus designed* to be used ~~in~~ *for the purpose of* distilling, shall be deemed a manufacturer of stills.

*Every still, distilling apparatus, condenser, worm, or apparatus designed to be used for the purpose of distilling shall be marked, stamped, or branded. Dealers in and manufacturers of stills shall keep such records and make such returns as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe.*

*The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is hereby authorized to make all necessary regulations to carry into effect the provisions of this section.*

**Title XIII (new section). Exemption of manufacturers of absolute alcohol from the special tax upon rectifiers of distilled spirits proposed.**

A very small quantity of absolute alcohol is manufactured in the United States, and it is used exclusively for medicinal and chemical purposes. In the manufacture of absolute alcohol, alcohol of the highest commercial proof is purchased and is then treated with lime and further refined and distilled until all the water is extracted and the resulting alcohol is of 200 proof. It has been suggested that manufacturers of absolute alcohol should be exempt from special tax since the amount of revenue involved is infinitesimal and the use of such alcohol being so dissimilar to rectified spirits.

It has been suggested that this change could be accomplished by an amendment in substantially the following form:

Amend the Revenue Act of 1918 by adding a new section as follows:

SEC. 1323. That the third subdivision of section 3244 of the Revised Statutes, as amended, is hereby amended by adding a paragraph at the end thereof as follows:

*The process of extraction of water from high proof spirits for the production of absolute alcohol shall not be deemed to be rectification within the meaning of this section.*

**Title XIII (new section). To enable distillers or owners of distillery premises by giving proper bond security to free such premises from the lien and thereby permit the sale or use of such premises for purposes other than the manufacture of distilled spirits.**

Under the provisions of section 3251, Revised Statutes, the tax on distilled spirits is a first lien on the spirits distilled, the distillery used for distilling the same, the stills, vessels, fixtures and tools therein, the lot or tract of land whereon the distillery is situated, and on any building thereon from the time the said spirits are in existence as such until the tax is paid.

Under section 3251, Revised Statutes, the lien created continues on the entire distillery property, including the spirits in bond, however small the quantity of spirits may be, and notwithstanding that the premises will no longer be used for distilling purposes.

In many cases the spirits are now owned by persons other than the distiller or owner of the premises, and under present conditions the spirits can be removed only for non-beverage purposes or for export. Such removals, however, are in many cases impracticable owing to the limited demand for bonded spirits for such purposes.

It has been suggested that the distiller or owner of the premises should be permitted, by law, to give proper bond security and thus to free the premises from lien, thereby enabling him to use or sell the premises for purposes other than the manufacture of distilled spirits.

It has been suggested that the change could be accomplished by an amendment in substantially the following form:

Amend the Revenue Act of 1918 by adding a new section as follows:

*Sec. 1324. That liens on distillery premises created under section 3251 of the Revised Statutes as amended, and consents under section 3262 of the Revised Statutes, as amended, are hereby discharged and canceled where there is no outstanding liability of the distiller for accrued taxes and penalties and no litigation is pending: Provided, That nothing herein contained shall affect in any manner forfeitures heretofore effected under such sections and consents or proceedings in forfeiture now pending. Where*

*operations are permanently discontinued at any distillery with spirits in warehouse and there are no outstanding accrued taxes or penalties, an indemnity bond may be given in lieu of the lien and consents under such sections, if such bond is given in a sufficient penal sum to cover the value of the land and buildings thereon constituting the distillery premises, and all other property covered by the lien except the spirits in warehouse and their containers. The lien upon such spirits and containers for taxes and penalties shall remain in full force and effect.*

*The Commissioner, with the approval of the Secretary, is hereby authorized to make all necessary regulations for the enforcement of this section.*

**Title XIII (new section). Conviction of illicit distillers.**

It has been suggested that the law should permit the conviction of illicit distillers in cases in which the complete still is not discovered in operating condition. This suggestion is made for the reason that it is a common practice for illicit distillers to take their apparatus apart and for one person to have in his possession the still and for another to have the worm.

It has been suggested also that it would be better to leave the manner in which the registration of stills, worms, etc., should be made to regulations rather than incorporate the provision in the statute; and that the words "shall be forfeited" be changed to "may be forfeited," in order to remedy the drastic provisions of the section.

It has been suggested that these changes could be accomplished by an amendment in substantially the following form:

Amend the Revenue Act of 1918 by adding a new section as follows:

SEC. 1325. That section 3258 of the Revised Statutes is hereby amended to read as follows:

SEC. 3258. Every person having in his possession or custody, or under his control, any still, *worm, condenser,* ~~or~~ distilling apparatus, *or any apparatus designed to be used for distilling* ~~set up~~, shall register the same with the collector of the district in which it is ~~, by subscribing and filing with him duplicate statements, in writing, setting forth the particular place where such still or distilling apparatus is set up, the kind of still and its cubic contents, the owner thereof, his place of residence, and the purpose for which said still or distilling apparatus has been or is intended to be used; one of which statements shall be retained and preserved by the collector, and the other transmitted by him to the Commissioner of Internal Revenue. Stills and distilling apparatus shall be registered immediately upon their being set up~~.

Every still, *worm, condenser,* ~~or~~ distilling apparatus, *or any apparatus designed to be used for distilling,* not so registered, together with all personal property in the possession or custody, or under the control of such person, and found in the building, or in any yard or inclosure connected with the building in which the same may be ~~set up, shall~~ *may* be forfeited.

~~And~~ Every person having in his possession or custody, or under his control, any still, *worm, condenser,* ~~or~~ distilling apparatus *or any apparatus designed to be used for distilling* ~~set up,~~ which is not so registered, shall pay a penalty of $500, and shall be fined not less than $100 nor more than $1,000, and imprisoned for not less than one month, nor more than two years.

*The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is hereby authorized to make all necessary regulations for the enforcement of this section.*

**Title XIII (new sections). To allow the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to dispose of seized distilled spirits in such manner as they direct.**

Under the language of section 3460, Revised Statutes, it is necessary to sell property seized for violation of the internal revenue laws, of the value of $500 or less, in the district where seizure is made, which, in the case of liquor seizures in dry territory involves conflict with the local laws.

It has been suggested that it would be desirable to invest the executive officers with more discretion than the statutes at present allow. Section 3460, Revised Statutes, makes sale compulsory and section 3334, Revised Statutes, requires that distilled spirits be sold subject to tax. Much of the spirits seized is of such low quality that it can not be sold in a legitimate market for the amount of the tax. In such cases literal compliance with the statutes is impossible. Furthermore, the Government itself is a considerable consumer of alcoholic liquor for medicinal and other purposes, and it has been suggested that it would sometimes be more advantageous to turn the liquor, even in wet territory, over to some department or branch of the Government than to offer it for sale.

It has been suggested that no harm would result from conferring such authority without regard to the value of the property seized. Such result could be achieved by omitting from the first paragraph of section 3460 Revised Statutes, the words, "which, in the opinion of the collector or deputy collector making the seizure, are of the appraised value of five hundred dollars or less"; and omitting the word, "said" before "collector."

If the aforementioned suggestions are adopted section 3453, Revised Statutes, should be amended and made consistent with section 3460, Revised Statutes, as amended.

The language of section 3453, Revised Statutes, seems to require institution of court proceedings in all seizure cases, without exception. An amendment, consistent with those suggested with respect to section 3460, Revised Statutes, could be made by adding to section 3453, Revised Statutes, the words:

"*Provided*, That the proceedings prescribed by section 3460, Revised Statutes, as amended by section 1329 of this act, may be followed if the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury so directs."

If the aforementioned suggestions are adopted, all the matter following the first sentence of the second paragraph of section 3450, Revised Statutes, should be eliminated.

It has been suggested that these changes could be accomplished by amendments in substantially the following form:

1. Amend the Revenue Act of 1918 by adding a new section as follows:

SEC. 1326. That section 3450 of the Revised Statutes is hereby amended to read as follows:

SEC. 3450. Whenever any goods or commodities for or in respect whereof any tax is or shall be imposed, or any materials, utensils, or vessels proper or intended to be made use of for or in the making of such goods or commodities are removed, or are deposited or concealed in any place, with intent to defraud the United States of such tax, or any part thereof, all such goods and commodities, and all such materials, utensils, and vessels, respectively, shall be forfeited; and in every such case all the casks, vessels, cases, or other packages whatsoever, containing, or which shall have contained, such goods or commodities, respectively, and every vessel, boat, cart, carriage, or other conveyance whatsoever, and all horses or other animals, and all things used in the removal or for the deposit or concealment thereof, respectively, shall be forfeited. And every person who removes, deposits, or conceals, or is concerned in removing, depositing, or concealing any goods or commodities for or in respect whereof any tax is or shall be imposed, with intent to defraud the United States of such tax or any part thereof, shall be liable to a fine or penalty of not more than $500. ~~And all boilers, stills, or other vessels, tools, and implements, used in distilling or rectifying, and forfeited under any of the provisions of this title, and all condemned material, together with any engine or other machinery connected therewith, and all empty barrels, and all grain or other material suitable for distillation, shall, under the direction of the court in which the forfeiture is recovered, be sold at public auction, and the proceeds thereof, after deducting the expenses of sale, shall be disposed of according to law.~~

~~And all spirits or spirituous liquors which may be forfeited under the provisions of this title, unless herein otherwise provided, shall be disposed of by the Commissioner of Internal Revenue as the Secretary of the Treasury may direct.~~

2. Amend the Revenue Act of 1918 by adding a new section as follows:

SEC. 1327. That section 3453 of the Revised Statutes is hereby amended by striking out the period at the end thereof and inserting a colon and the following:

*Provided, That the proceedings prescribed in the fourth subdivision of section 3460, Revised Statutes, as amended, may be followed if the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, so directs.*

3. Amend the Revenue Act of 1918 by adding a new section as follows:

SEC. 1328. That the first paragraph of section 3460 of the Revised Statutes is hereby amended to read as follows:

SEC. 3460. In all cases of seizure of any goods, wares, or merchandise, as being subject to forfeitures under any provision of the internal-revenue laws, ~~which, in the opinion of the collector or deputy collector making the seizure, are of the appraised value of $500 or less,~~ the ~~said~~ collector or deputy collector shall, except in cases otherwise provided, proceed as follows:

4. Amend the Revenue Act of 1918 by adding a new section as follows:

SEC. 1329. That the fourth subdivision of section 3460 of the Revised Statutes is hereby amended to read as follows:

Fourth. If no claim is interposed and no bond is given within the time above specified, ~~the collector or deputy collector, as the case may be, shall give ten days' notice of the sale of~~ the goods, wares, or merchandise ~~by publication, and, at the time and place specified in the notice, shall sell the articles so seized at public auction, and, after deducting the expense of appraisement and sale, he shall deposit the proceeds to the credit of the Secretary of the Treasury~~ *shall be forfeited to the United States and shall be disposed of in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may direct.*

**Title XIII (new section). Any regulation or Treasury decision reversing a prior regulation or Treasury decision to be made effective from date of approval.**

In regulations 47, article 10, it was ruled that all sales of articles taxable under section 900 were tax exempt when sold to a State or municipality and paid for out of funds of the State or municipality. Section 1319 of the revenue act imposes a fine of not more than

$1,000 or imprisonment not exceeding one year, or both, in the case of any taxpayer passing on a tax to a purchaser and representing it to be a tax when in fact it is not. The effect of the aforementioned regulation and section 1319 of the revenue act was, for example, to cause the music concerns of the United States to sell pianos to school boards tax exempt. If the music companies had not made these sales tax exempt, they would have been liable to penalty under section 1319. The Attorney General reversed this ruling of the Treasury Department in June, 1919, holding that all sales of articles taxable under section 900 when made to a State or municipality were subject to tax. In view of the fact that Congress has never seen fit to allow an administrative officer to waive a tax legally imposed, it was the duty of the Commissioner of Internal Revenue and the Secretary of the Treasury to assess and collect a tax upon all sales of taxable articles under section 900 of the Revenue Act of 1918 and section 600 of the Revenue Act of 1917, as well as certain other sections of both acts. While the policy of Congress in refusing to allow an administrative officer to waive a tax legally imposed is a proper one, in cases like the aforementioned it very frequently works a great hardship. It has been suggested that an amendment be made to the present revenue law providing that in case a regulation or Treasury decision, approved by the Commissioner and Secretary, reverses a prior regulation or Treasury decision, the subsequent regulation or Treasury decision may, in the discretion of the Commissioner, with the approval of the Secretary, be made effective from the date of approval.

It has been suggested that this change could be accomplished by an amendment in substantially the following form:

Amend the Revenue Act of 1918 by adding thereto a new section as follows:

> *Sec. 1330. That in case a regulation or Treasury decision, approved by the Commissioner and Secretary, is reversed by a subsequent regulation or Treasury decision, such regulation or Treasury decision may, in the discretion of the Commissioner, with the approval of the Secretary, be made effective from the date of approval.*

**Title XIII (new section). Credit allowed for tax reimbursed to manufacturer of a taxable article when such article is used in the manufacture of another article subject to tax.**

In a number of cases a tax is imposed upon the selling price of an article which is used in the manufacture of an article also subject to tax. It was the opinion of the Treasury Department that it was not the desire of Congress that in such cases an article should be doubly

taxed, and it has accordingly held that in all cases where a manufacturer purchases an article subject to tax and reimbursed the manufacturer thereof for the tax so imposed, if such manufacturer uses the article in the further manufacture of another article subject to tax, he may receive a credit for any tax so reimbursed to the first manufacturer. An example of such an instance is found in section 900, subdivision (4). In this subdivision a tax is imposed upon the price for which a piano-player is sold or leased. A tax is also imposed under this subdivision upon pianos. In actual practice very few manufacturers of pianos manufacture piano-players but purchase the player action for incorporation in the piano.

It has been suggested that a new section be added to the law confirming the holding of the Treasury Department.

It has been suggested that this change could be accomplished by an amendment in substantially the following form:

Amend the Revenue Act of 1918 by adding thereto a new section as follows:

> *Sec. 1331. That a taxpayer under this act may take as a credit against any tax imposed in respect to the sale by him of any article taxable under this act, an amount equal to any tax imposed under this act which he has reimbursed to the vendor from whom he purchased any article forming a component part (whether or not changed in form by process of manufacture) of the article sold by him and in respect to which tax is paid by him. This credit shall be allowed only if the taxpayer keeps such records and evidence as will clearly establish his right to the exemption.*

**Title XIII (new section). Records and computation of tax in the case of sales of articles taxable under sections 628, 900, 902, 905, or 906 of the Revenue Act of 1918.**

In many instances manufacturers of articles subject to tax under sections 628, 900, 902, 905, or 906 do not pass the tax on to the purchaser at least by billing the amount of the tax separately. In all such cases the tax is computed upon the selling, leasing, or licensing price. To require the tax due the Government in the case of each individual transaction to be computed upon the selling price of such transaction would entail a great amount of clerical burden upon such manufacturers and all that could possibly be gained would be 1 cent on each transaction where the fraction of a cent is five-tenths of a cent or more. It is suggested that in practically all cases the Government will receive the same amount of revenue by allowing the tax to be computed upon the gross sales of such taxable articles. The department has so held and it has been suggested that the ruling be confirmed by legislative enactment.

It has been suggested that this change could be accomplished by an amendment in substantially the following form:

Amend the revenue act of 1918 by adding thereto a new section as follows:

*Sec. 1332. That in all cases of sales, leases, or licenses of articles taxable under the provisions of sections 628, 900, 902, 905, or 906 of this act, the person liable to make return and payment of the tax shall, in order that such return may be readily checked and verified by internal-revenue officers, keep such records and memoranda as will clearly show the amount of the sales of taxable articles for each month. In such cases the tax may be computed upon the gross amount of such sales during the month for which the return is made.*

**Title XIII (new section).** *Basis of the tax imposed by sections 628, 900, 902, 905, or 906 of the Revenue Act of 1918.*

The Treasury Department has ruled that in computing the tax imposed by sections 628, 900, 902, 905, or 906 if the selling, leasing or licensing price is increased to cover the tax imposed, the tax shall be computed upon the basis of the increased price, however, if the tax is billed as a separate item, that the amount of the tax need not be included in the price of the article in computing the tax. The Department has also held, in the case of a rescinded sale, that no tax shall be deemed to be imposed under the aforementioned sections and that if a tax has been paid upon a sale which is later entirely rescinded, the person making the return and paying the tax may take a credit for such tax so paid in any subsequent monthly tax return. It has been suggested that this ruling be confirmed by legislative enactment.

It has been suggested that this change could be accompanied by an amendment in substantially the following form:

Amend the Revenue Act of 1918 by adding thereto a new section as follows:

*Sec. 1333. That in the case of the sale, lease, or license of articles taxable under the provisions of sections 628, 900, 902, 905, or 906 of this act, if the selling, leasing or licensing price is increased to cover the tax imposed, the tax shall be computed upon the basis of such increased price. If the tax is billed as a separate item and the contract states that the purchaser will reimburse the manufacturer for the tax, the tax need not be included in the price of the article in computing the tax. If an article taxable under the provisions of sections 628, 900, 902, 905, or 906 of this act is returned after sale, leasing or licensing and the sale, lease or license is entirely rescinded, no tax with respect to such sale, lease, or license shall be payable, and if a tax has been paid upon such a transaction, it may be credited against the tax included in a subsequent monthly return.*

**Title XIII (new section). Articles shall not be doubly taxed. With the exception of the cases specially provided for under section 904, the section containing the most specific description of the article subject to tax shall govern.**

It is the opinion of the Treasury Department that, with the exception of the cases specially provided for under section 902, it was not the intention of Congress that an article shall be doubly taxed, and it has accordingly held that, with the exception of the cases specially provided for under section 904, the section containing the most specific description of the article subject to tax shall govern. Article 32 of Regulations 54 clearly sets out the holding of the department in such cases and is as follows:

> ART. 32. When an article is within the language of two or more sections of the statute, by each of which a tax is imposed, the article shall not be doubly taxed, but shall, as a general rule, be held taxable under that section which contains the more specific description; thus, subdivision 14 of section 904 (a) imposes a tax on shoes and section 905 imposes a tax on articles made of, or ornamented, mounted or fitted with precious metals or imitations thereof, or ivory. A pair of leather shoes ornamented with gold buckles would fall within the terms of both these sections; but the description "shoes," being the more specific, would be the controlling description for taxable purposes. (See art. 26 of these Regulations.)

While this is the general rule, the statute makes certain broad exceptions. As an illustration of the exceptions made by the statute, the case of fans may be taken. Fans are taxable as such under paragraph (8) of section 904 (a). They are also within the language of section 905 when made of or ornamented, mounted, or fitted with precious metals or imitations thereof or ivory. In the absence of statutory provisions to the contrary, the description "fans," being the more specific, would control, but subdivision (b) of section 904 specifically provides that articles enumerated in paragraphs (2) to (8), both inclusive, of section 904 (a), when made of or ornamented, mounted, or fitted with precious metals or imitations thereof or ivory, shall not be subject to the tax imposed by section 904; and this specific exclusion (so far as the articles which it covers are concerned) reverses the above-mentioned general rule and makes the less specific description apply. For instance, a fan, being one of the articles specifically exempted from taxation under section 904, when made of or ornamented, mounted, or fitted with precious metals or imitations thereof or ivory, is taxable under section 905 at the rate of 5 per cent of the full sales price and not under subdivision (8) of section 904 (a). (See art. 20 of these Regulations.) And any other article which is made of or ornamented, mounted, or fitted with precious metals or imitations thereof or ivory, if it is one of the articles enumerated in paragraphs (2) to (8), inclusive, of section 904 (a) (arts. 14 to 20, inclusive, of these Regulations), is not subject to tax under section 904. Of course, a fan or any other article enumerated in paragraphs (2) to (8), inclusive, of section 904 which is not made of or ornamented, mounted, or fitted with precious metals or imitations thereof or ivory, and which is not within either of the other exceptions made by section 904 (b), is taxable under section 904.

Of the other exceptions made by section 904 (b), one relates to articles made of fur on the hide or pelt or of which any such fur is the component material of chief value (an article will not be regarded as within this exception unless fur is that component material which is not exceeded in value by any other single component material in the article); the other relates to articles enumerated in subdivisions (17) and (18) of section 900. Of these two subdivisions, (17 relates to liveries and livery boots and hats, and (18) relates to hunting and shooting garments and riding habits. These exceptions are not limited to any particular subdivisions of section 904 (a), but relate

to them all. Therefore any article whatever, which is made principally of fur on the hide or pelt or of which any such fur is the component material of chief value, or which is enumerated in subdivision (17) of section 900 of the statute, covering liveries and livery boots and hats, or in subdivision (18) of section 900, covering hunting and shooting garments and riding habits, is not subject to tax under these regulations but to the 10 per cent tax on the full sales price imposed by section 900 of the statute. (See arts. 29, 30, and 31, of Regulations No. 47.)

It will sometimes happen that the same article is within more than one of the exceptions specified by section 904 (b) of the statute. The rule, that the more specific description governs, again applies. Either of the other designations (that is, furs, liveries, or hunting garments) covered by the several exceptions, is more specific than that relating to articles made of, or ornamented, mounted, or fitted with, precious metals or imitations thereof, or ivory. This latter is also the only designation covering a tax of 5 per cent on the full sales price. All the other designations covered by the exceptions cover a tax of 10 per cent on the full sales price. It accordingly follows that if any article is within more than one exception specified by section 904 (b), it is subject to a 10 per cent tax on its full sales price. It is only when it is within the exception relating to articles made of, or ornamented, mounted, or fitted with precious metals, or imitations thereof, or ivory, solely, that the tax at the rate of 5 per cent on the full sales price applies. Take, for example, purses. A leather purse without ornaments of precious metals, etc., would not be within any of the exceptions and if sold for more than $7.50 would be taxable on the excess of the sales price over that amount, under paragraph (5) of section 904 (a), simply as a purse. Next, take a leather purse with gold ornaments. The gold ornaments would bring it within the exception relating to articles ornamented with precious metals, etc., and it would, therefore, be subject to tax of 5 per cent of the full sales price. Now, take a purse made principally of fur or of which fur is the component of chief value. It would be within the exception covering articles made of fur, etc., and would be subjet to a tax of 10 per cent of the full sales price. Even though this latter purse were also ornamented with precious metals, it would still be subject to the same tax as an article made of fur, since the designation covering articles made of fur takes precedence over that covering articles ornamented with precious metals, etc.

In short, an article which is within any of the specific designations of section 904 (a) of the statute is subject to the tax imposed thereby unless it is covered by any of the exceptions enumerated in section 904 (b). If it is covered by the exception relating to articles ornamented with precious metals, etc., it is not subject to tax under section 904 (a), but to a tax of 5 per cent of the full sales price under section 905. If it is within either of the other exceptions, even though it is also within that relating to articles ornamented with precious metals, etc., it is subject to a tax of 10 per cent of the full sales price under section 900 of the statute.

It has been suggested that this holding of the Treasury Department should be confirmed by legislative enactment.

It has been suggested that this change could be accomplished by an amendment in substantially the following form:

Amend the Revenue Act of 1918 by adding thereto a new section as follows:

*Sec. 1334. That except as otherwise provided under section 904 of this act, when a tax is imposed upon the selling or leasing price of an article within the language of two or more sections of the act, the tax shall be deemed to be imposed only under the section which contains the most specific description of the article subject to tax.*

**Title XIII (new section). Amendment proposed to section 7 of the act of August 2, 1886, to permit the required statement for properly marking oleomargarine packages to be printed on the package in lieu of affixing labels.**

It has been suggested that in view of the fact that section 6 of the act of August 2, 1886, was amended by H. R. 9054, "An act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1919," to permit the use of paper containers as original packages for oleomargarine, that section 7 of the act of August 2, 1886, should also be amended to permit the required statement in properly marking such packages to be printed on the package in lieu of affixing labels.

It has been suggested that this change could be accomplished by an amendment in substantially the following form:

Amend the Revenue Act of 1918 by adding thereto a new section as follows:

*Sec. 1335. That section 7 of the act approved August 2, 1886, entitled, "An act defining butter, also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of oleomargarine, is hereby amended by adding at the end thereof a sentence as follows:*

*In the case of paper packages the required statement may be printed on the package, in lieu of affixing labels under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe.*

**Title XIII (new section).—Severe penalty imposed if taxpayer refuses to keep books in a manner to reflect the income.**

It has been suggested that in a few instances taxpayers do not keep books in such a way as to clearly reflect the income and absolutely refuse to comply with the request of the Treasury Department, and that a sufficient penalty should be provided in order to enable the commissioner in all cases to require taxpayers to keep their books in such a manner as to clearly reflect their income.

It has been suggested that this change could be accomplished by an amendment in substantially the following form:

Amend the Revenue Act of 1918 by adding a new section as follows:

*Sec. 1336. That if in the opinion of the Commissioner, a taxpayer does not keep his books in a manner that will clearly reflect the income, he may require the taxpayer to keep his books in a manner that will so reflect the income.*

*Whenever any person fails to comply with the provisions of this section, he shall be punished by a fine of not more than $10,000, or by imprisonment not exceeding one year, or both.*

**Title XIII (new section).—All tax assessments to be made within five years.**

Under the Revenue Act of 1918, section 3182, of the Revised Statutes covers capital stock tax assessments understated or omitted from any list and provides that they must be made within 15 months from the date of delivery to the collector of the list upon which the assessments of such tax are made or from which they are omitted. Subdivision (d) of section 250 of the Revenue Act of 1918 allows five years for assessment in the case of income and excess profits taxes, and it has been suggested that the same period of time should extend to the assessment of capital stock taxes and all other taxes not payable by stamp.

It has been suggested that, due to the volume of work and the limited force of the Internal Revenue Bureau in the past, the capital stock tax audit has not been completed each year within the 15-month period, and that in order to avoid legal proceedings it has been necessary to request taxpayers to sign waivers of the statutory limitation and that the suggested extension of time would eliminate the necessity for such an unsatisfactory procedure.

It has been suggested that this change could be accomplished by an amendment in substantially the following form:

Amend the Revenue Act of 1918 by adding a new section as follows:

SEC. 1337. That section 3182 of the Revised Statutes is hereby amended to read as follows:

"SEC. 3182. The Commissioner of Internal Revenue is hereby authorized and required to make the inquiries, determinations, and assessments of all taxes and penalties imposed by this Title, or accruing under any ~~former~~ internal-revenue act, where such taxes had not been duly paid by stamp at the time and in the manner provided by law, and shall certify a list of such assessments when made to the proper collectors respectively, who shall proceed to collect and account for the taxes and penalties so certified. Whenever it is ascertained that any list which has been or shall be delivered to any collector, is imperfect or incomplete in consequence of the omission of the name of any person liable to tax, or in consequence of any omission, or understatement, or undervaluation, or false or fraudulent statement contained in any return made by any person liable to tax, the Commissioner of Internal Revenue may, at any time within ~~15 months~~ *five years* from the time of the delivery of the list to the collector as aforesaid, enter on any monthly or special list the name of such person so omitted, together with the amount of tax for which he may have been or shall become liable, and also the name of any such person in respect to whose return, as aforesaid,

there has been or shall be any omission, undervaluation, understatement, or false or fraudulent statement, together with the amount for which such person may be liable, above the amount for which he may have been or shall be assessed upon any return made as aforesaid; and he shall certify and return such list to the collector as required by law. And all provisions of law for the ascertainment of liability to any tax, or the assessment or collection thereof, shall be held to apply, so far as may be necessary to the proceedings herein authorized and directed."

**Title XIII (new section). Amendments to Revenue Act of 1918 to be effective from date of approval of the new act.**

It has been suggested that any amendment to the Revenue Act of 1918 should be effective only from the date of the approval of the act amending the same.

It has been suggested that this change could be accomplished by an amendment in substantially the following form:

Amend the Revenue Act of 1918 by adding a new section as follows:

*SEC. 1338. That all amendments to the revenue act of 1918 made by this act shall be effective only from the date of approval of this act.*

**[Part II containing a digest of the decisions of the United States Courts construing the internal-revenue laws from 1909 to 1918, both inclusive, is printed as a separate document.]**

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# NOTES ON THE
# REVENUE ACT OF 1918

DIGEST OF DECISIONS
OF UNITED STATES COURTS
CONSTRUING
THE INTERNAL REVENUE LAWS
1909 TO 1918, INCLUSIVE

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PREPARED BY DIRECTION OF
THE SECRETARY OF THE TREASURY

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PRINTED FOR THE USE OF THE
COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

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## PART II

SUPPLEMENT TO

The Corporation Trust Company's

**Federal Services**

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# DIGEST OF DECISIONS OF UNITED STATES COURTS.

## CONSTRUING INTERNAL REVENUE LAWS, 1909-1918.

[This part contains a digest of the decisions of the United States courts under the internal revenue acts from 1909 to 1918, inclusive. The West Publishing Co. and the Bank Law Publishing Co. authorized such use of their syllabi in the preparation of this compilation as the Treasury Department deemed proper. The department desires in this way to acknowledge the valuable assistance rendered by these companies.]

## CORPORATION EXCISE TAX.

### ACT OF AUGUST 5, 1909, SECTION 38.

Appropriation for collection of tax, June 17, 1910. Provision for refund of penalty tax, March 3, 1913. Repealed by act of October 3, 1913 (Sec. IV, S), containing provision for months of January and February, 1913, and for rights and liabilities accrued under act of August 5, 1909.

### DECISIONS UNDER THE CORPORATION EXCISE TAX ACT, AUGUST 5, 1909.

#### CONSTITUTIONALITY AND CONSTRUCTION IN GENERAL.

**Application.**

The corporation tax law applies to mining corporations. (Stratton's Independence *v.* Howbert, 231 U. S. 399, 1913.)

**Constitutionality.**

Corporation tax act is not unconstitutional as imposing a direct tax not apportioned according to population, though with reference to mining companies the net income of the corporation is determined by ascertaining the value of ore extracted after deducting the cost of extraction and treatment and the cost of administering the corporation, with a reasonable reservation for contingencies, since such method of determination does not make the tax a tax on the corpus of the estate. (Stratton's Independence *v.* Howbert, 207 Fed. 419, 1912, 231 U. S. 399, 400, 1913.)

The fact that a statute operates retroactively does not necessarily cause it to be unconstitutional. (Flint *v.* Stone-Tracy Co., 220 U. S. 107, 1911.)

The tax imposed by section 38, act August 5, 1909, is valid as an excise on the privilege of doing business in a corporate capacity. (Flint *v.* Stone-Tracy & Co., 220 U. S. 107, 1911, and Blalock *v.* Georgia Ry. & Elec. Co., 228 Fed. 296, 1916. Also United States *v.* Whitridge, and United States *v.* Joline & Robinson, 231 U. S. 144, 1913.) (McCoach *v.* Minehill Ry. Co., 228 U. S. 295; Anderson *v.* Forty-two Broadway Co., 239 U. S. 69.)

"We have noticed such objections as are made to the constitutionality of this law as it is deemed necessary to consider. Finding the statute to be within the constitutional power of the Congress, it follows * * *." (Flint *v.* Stone-Tracy Co., 220 U. S. 107, 177.)

It was not an arbitrary classification for Congress to draw the line regarding deduction of interest on bonded indebtedness or other indebtedness at the precise point where the pecuniary interest of creditors overbalanced that of stockholders. (Anderson *v.* Forty-Two Broadway, 239 U. S. 69, 1915.)

**Excise.**

The tax imposed by section 38, act August 5, 1909, having been enacted before the ratification of the Sixteenth Amendment was not in any proper sense an income tax law; but was an excise tax upon the conduct of business in a corporate capacity, measured by the income, with certain qualifications prescribed by the act itself. (Stratton's Independence *v.* Howbert, 231 U. S. 399, 1913; Anderson *v.* Morris & Essex R. Co., 216 Fed. 83, 1914, National Bank of Commerce in St. Louis *v.* Allen, 223 Fed. 472, 1915; Anderson *v.* Forty-Two Broadway Co., 239 U. S. 69, 1915.)

**Limitations of Congress.**

The only limitation of the power of Congress in the imposition of excise taxes, such as those imposed on corporations, is that they be uniform throughout the United States, and by that is meant a geographical uniformity. (Camp Bird Ltd. *v.* Howbert, 249 Fed. 27, 1918, C. C. A. affirming the decision of the district court; case taken to the Supreme Court and reversed in 248 U. S., 590.)

**Measurement of the tax.**

The measurement of the corporation tax by net income is not beyond the power of Congress as arbitrary and baseless. (Flint *v.* Stone-Tracy Co., 220 U. S., 107, 1911.)

**Statutory construction.**

Tax laws should be given the same construction by all courts throughout the territorial limits within which the tax is levied. (Northern Tr. Co. *v.* McCoach, 215 Fed. 991, 1914.)

The excise-tax law of August 5, 1909, must be construed in favor of taxation. (United States *v.* Guggenheim Exploration Co., 238 Fed. 231, 1917.)

**Purpose of the act.**

The purpose of the act is not to tax property as such, or the mere conversion of property, but to tax the conduct of the business of corporations organized for profit by a measure based upon the gainful returns from their business operations and property from the time the act took effect. (Doyle *v.* Mitchell Bros. Co., 247 U. S. 179, 1918.)

**Repealing provisions of the act of October 3, 1913.**

Corporation excise-tax act August 5, 1909, which embraced no tax upon dividends received by corporations from stock of other corporations subject to the tax, was repealed by income-tax act October 3, 1913, section 4–S, which contained a proviso that the repeal of existing laws or modifications thereof embraced in the act should not affect any act done or right accruing, or any suit or proceeding had or commenced in any civil case before such repeal or modification, but all rights and liabilities under such laws should continue and might be enforced in the same manner as if such repeal or modification had not been made. *Held*, that such saving clause was intended to relate only to rights and liabilities in respect to taxes which had accrued under the act of 1909, and was not intended to cover excise taxes upon corporations for the months of January and February, 1913, which were imposed by the income-tax act, as the constitutional amendment of March 1, 1913, designed to permit taxation of incomes without apportionment, was not adopted until March 1, this being apparent from the provision in that act that excise taxes for two months shall be ascertained in accordance with the provisions of section 2-G. Consequently exemptions in the corporation excise-tax act are not applicable to taxes imposed for those two months. (Butterick Co. *v.* United States and Federal Pub. Co. *v.* same, 240 Fed. 539, 1917.) Dismissed on motion of U. S. (248 U. S. 587.)

### SUBDIVISION I, SECTION 38.

SEC. 38. That every corporation, joint stock company or association, organized for profit and having a capital stock represented by shares, and every insurance company, now or hereafter organized under the laws of the United States or of any State or Territory of the United States or under the acts of Congress applicable to Alaska or the District of Columbia, or now or hereafter organized under the laws of any foreign country and engaged in business in any State or Territory of the United States or in Alaska or in the District of Columbia, shall be subject to pay annually a special excise tax with respect to the carrying on or doing business by such corporation, joint stock company or association, or insurance company, equivalent to one per centum upon the entire net income over and above five thousand dollars received by it from all sources during such year, exclusive of amounts received by it as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed; or if organized under the laws of any foreign country, upon the amount of net income over and above five thousand dollars received by it from business transacted and capital invested within the United States and its Territories, Alaska, and the District of Columbia during such year, exclusive of amounts so received by it as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed: *Provided, however*, That nothing in this section contained shall apply to labor, agricultural or horticultural organizations, or to fraternal beneficiary societies, orders, or associations operating under the lodge system, and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders or associations, and dependents of such members, nor to domestic building and loan associations, organized and operated exclusively for the mutual benefit of their members, nor to any cor-

poration or association organized and operated exclusively for religious, charitable, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual.

**Corporations liable to the tax.**

(See also cases under Dissolved corporations, Excepted corporations, Foreign corporations, Receivers, and under "Doing business.")

Buying and selling real estate incidental to the business carried on by the lessee being exceptional and "trifling in amount" does not make the company liable. (Traction Companies *v.* Collectors, 223 Fed. 984, 1915. Reversing Dayton & Western Traction Co. *v.* Gilligan, etc., T. D. 2000.)

A corporation subjects itself to the tax by exercising the privilege of carrying on or doing business for any part of the year for which the tax is imposed. (228 Fed. 296—Blalock, Collector of Internal Revenue *v.* Georgia Ry. & Electric Co., 1916. Reversed on another point in 246 Fed. 387, 1917.)

Corporations organized under the laws of Minnesota, not for charitable or eleemosynary purposes, but for the pecuniary advantage of their shareholders, *held* "organized for profit" within the meaning of the corporation tax law of August 5, 1909. (Von Baumbach *v.* Sargent Land Co., 242 U. S. 503, 1917.)

A terminal railway company, organized for the purpose of performing terminal service for four railroad companies which were its stockholders, having been legally organized as a corporation capable of earning and paying dividends, is subject to corporation excise tax act, August 5, 1909, though the companies owning its stock organized the terminal company merely to provide a convenient joint agency for the performance of certain of their duties as carriers without any idea of deriving a profit. (Houston Belt & Terminal Ry. Co. *v.* United States, 250 Fed. 1, 1918.) (C. C. A. affirming decision of the district court.)

Where a railroad corporation leased its property and franchises for the whole term of its charter, the fact that the lessee paid the rent, not to the lessor entity, but rather to its stockholders and bond holders, could not prevent the rent so paid being subject to taxation under corporation tax act 1909, section 38, if the act was otherwise applicable. (Anderson *v.* Morris & E. R. Co., 216 Fed. 83, 1914.)

The Houston Belt & Terminal Co. was the terminal agent for four Texas railway companies, called tenant lines. The fact that the lessees paid an income in the form of rental to the Central Trust Co. does not exempt the said lessor from taxation as such rent was properly treated as having been paid to the terminal company and by it paid to the Central Trust Co. Judgment of district court affirmed. (Houston Belt & Terminal Co. *v.* U. S., 250 Fed. 1, 1918.)

The above act must be construed as imposing an excise tax upon the right to do business in corporate form; so, if the persons choose the corporate form of business, the corporate income may be estimated upon the assumption that the form is to be regarded as the reality. (United States *v.* Oregon-Washington R. & Nav. Co., 251 Fed. 211., U. S. C. C. A. N. Y., 1919.)

**Massachusetts trusts.**

It was the intention of Congress to embrace within the corporation tax provisions of the tariff act of August 5, 1909 * * * only such corporations and joint-stock associations as are organized under some statute, or derive from that source some quality or benefit not existing at common law.

A trust formed in a State, where statutory joint stock companies are unknown, for the purpose of purchasing, improving, holding and selling land, and which does not have perpetual succession but ends with lives in being and 20 years thereafter, is not within the provisions of the corporation tax law. (Elliot *v.* Freeman, 220 U. S. 178, Mar. 13, 1911.)

**Mining companies.**

The act applies to mining companies.

It is not unconstitutional as imposing a direct tax not apportioned according to population, though with reference to mining companies the net income of the corporation is determined by ascertaining the value of ore extracted after deducting the cost of extraction and treatment and the cost of administering the corporation, with a reasonable reservation for contingencies since such method of determination does not make the tax on the corpus of the estate. (Stratton's Independence *v.* Howbert, 207 Fed. 419, 1912; 231 U. S. 399, 1913.)

**New York joint-stock associations.**

Under the New York Joint-Stock Association Law (Consol. Laws, c. 29), authorizing joint-stock companies to sue and be sued in the name of the president or treasurer, and providing that suits against a joint-stock company shall be prosecuted in the first instance against the president or treasurer, and under Constitution of New York, article 8, section 3, providing that the term "corporation" shall be construed to include all associations and joint-stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships, and that all corporations shall have the right to sue, and shall be subject to be sued, in all cases as natural persons, an unincorporated joint-stock company, operating an express business, its shares being transferable, and its property being vested in trust for the association in five directors, enjoyed such privileges under the statutes of New York as to be taxable as a joint-stock

association existing under the laws of the State, under corporation tax law, August 5, 1909, c. 6, section 38, providing that every corporation, joint-stock company, or association organized for profit and having a capital stock represented by shares, now or hereafter organized under the laws of any State, shall be subject to a special excise tax, since under the statutes of the State the association was endowed with capacities and attributes not possessed by a partnership at common law; it being practically a "corporation" by New York law, despite the absence of the important corporate attribute of limited liability. (Roberts *v.* Anderson, 226 Fed. 8, 1915.) (See also, cases under act of 1913.)

CROSS REFERENCES—"DOING BUSINESS."

For set of facts held to constitute "doing business" in case of—
Additional franchises procured by lessor, see cases 17, 19.
Eminent domain exercised or purchase of property by lessor, see cases 13, 15, 21.
Distribution of rent by lessor, see cases 1, 2, 3a, 4, 5, 9, 17, 18, 23, 26, 27, 28, 29.
Insurance companies, see case 3.
Leased corporations, see cases 1, 2, 3a, 5, 6, 7, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35.
Mining companies, see cases 1, 2, 12, 33.
Power of attorney, see case 16.
Railway companies, see cases 3a, 10, 11, 13, 14, 15, 18, 25, 26, 29, 32, 34, 35.
Realty companies, see cases 4, 8, 9.
Sale of stocks or bonds or issuance of bonds by lessor, see cases 6, 15, 24, 27, 28, 34.
Street railway companies, see cases 5, 6, 7, 19, 20, 21, 22, 23, 27, 28, 31.
Rent paid by lessee directly to lessors' stockholders, see cases 12, 30.

**"Doing business."**

1. A corporation, the sole purpose whereof is to hold title to a single parcel of real estate subject to a long lease and, for convenience of the stockholders, to receive and distribute the rentals arising from such lease and proceeds of disposition of the land, and which has disqualified itself from doing any other business, is not a corporation "doing business" within the meaning of the corporation tax provisions of the act of August 5, 1909, c. 6, 36 Stat. 11, 112, and is not subject to the tax. (Zonne *v.* Minneapolis Syndicate, 220 U. S., 187, 1911.)

2. Where defendant corporation was organized to own the stock of a mining company, and had no assets except such stock, a small amount in bank, and office furniture, etc., and did nothing other than to receive dividends from the operating company and distribute them as such among its own stockholders, it was not "doing business" within the act and was not subject to the tax. (United States *v.* Nipissing Mines Co., 206 Fed. 431, 1913.)

3. An association organized under the laws of a State for the purpose of collecting assessments from its members and disbursing the same in payment of benefits on the death or injury of members

and the expenses of the association, any surplus at the end of a year being paid into a reserve fund to be used in payment of losses in any succeeding year which may exceed the assessments for that year, is an "insurance company" and in exercising the functions for which it was organized is "doing business" within the meaning of those terms as used in Corporation Tax Act, August 5, 1909. * * * (Commercial Traveler's Life and Accident Association *v.* Rodway 235 Fed. 370, 1913.)

3–A. A railway corporation which has leased its railroad to another operating company but which maintains its corporate existence and collects and distributes to its stockholders the rental, from the lessee and also dividends from investments is not "doing business" within the meaning of this act and hence not required to make return or pay the tax. (Park Realty Co. case, 220 U. S. 107, disting., and Zonne *v.* Mpls. Syndicate, 220 U. S. 187, followed.) (McCoach *v.* Minehill & S. H. R. R. Co. 228 U. S. 295, 1913, Affg. 192 Fed. 670, 1912.)

4. Where a corporation, with general business powers, amended its articles so as to limit its activities to the mere ownership and rental of certain property occupied and used by its stockholders as a department store, and applied the entire rent, first to the payment of interest on mortgage liens, and then to the payment of dividends to stockholders, it was not "doing business," under Corporation Tax Act, August 5, 1909. (Abrast Realty Co. *v.* Maxwell, 206 Fed. 333, and Maxwell *v.* Abrast Realty Co., 218 Fed. 457, 1914.)

5. Where a street railway company, under authority of the State law, leased at a graded annual rental its system of street railways, which it owned, operated, and controlled, to another company for a long term, and thereafter engaged in no other business than to maintain and preserve its corporate existence, receiving the rent, and distributing the income among its stockholders, it was no longer "doing business" as a traction company, and was therefore not subject to franchise taxation, under act of August 5, 1909 * * * which is only applicable to corporations doing business in a corporate capacity as authorized. (Wilkes-Barre & W. V. Traction Co. *v.* Davis, 214 Fed. 511, 1914.)

6. Selling stocks or bonds by lessor, proceeds to be applied to making improvements, makes lessor liable. The lessor company engages in business, although it may not have in its immediate possession the equipment and appliances of a railroad business. (Lima Electric R. & Lt. Co. *v.* Bettman, Commissioner's Annual Report, 1914, p. 25.) (But see cases No. 15, 24, 34.)

7. Substituting one mortgage bond for another for the purpose of renewing, refunding, or extending time for the payment of preexist-

ing debt, does not render the lessor company liable as carrying on business in the capacity designated in its articles of incorporation. (Lima Elec. Ry. and Lt. Co. *v.* Bettman, S. D., Ohio, Annual Report of Commissioner of Int. Rev. 1914, p. 26.)

8. A corporation to be subject to the tax must be organized for the purpose of doing business, and, in addition, must be actually engaged in that business.

The question is rather what the corporation is doing than what it could do. (Emery, Bird, Thayer Realty Co. *v.* United States, 198 Fed. 242, 1912, affirmed by Supreme Court in 237 U. S. 28, 1915.)

9. A realty corporation simply collecting and distributing rent from a specified parcel of land is not doing business within the meaning of corporation tax law of 1909. (Emery, Bird, Thayer Realty Co. *v.* United States, 198 Fed. 242, 1912, affirmed by Supreme Court, 237 U. S. 28, 1915; Zonne *v.* Minneapolis Syndicate, 220 U. S. 187, followed; Cedar St. Realty Co. *v.* Park Realty Co., 220 U. S. 107, distinguished.)

10. Within act August 5, 1909, section 38, the expression "engaged in business," "carrying on business," or "doing business" do not have different meanings, but separately or connectedly convey the idea of progression, continuity, or sustained activity, and "engaged in business" means occupied or employed in business; "carrying on business" does not mean the performance of a single disconnected business act, but means conducting, prosecuting, and continuing business by performing progressively all the acts normally incident thereto, while "doing business" conveys the idea of business being done, not from time to time, but all the time. (Lewellyn *v.* Pittsburgh B. & L. E. R. Co., 222 Fed. 177, 1915.)

11. The bare acts of the lessor company in acquiring property by purchase and condemnation proceedings at request of lessee do not constitute "carrying on or doing business" within the meaning of the statute. (Lewellyn *v.* Pittsburgh B. & L. E. R. Co., 222 Fed. 177, 1915.)

12. An iron company, which with the approval of its stockholders, leased to another company for 999 years all the property constituting its manufacturing plant, sites, mines, and roads, and coal and other lands, not to exceed 10,000 acres, and assigned to the lessee all its cash, contracts, and entire business, in consideration of a rental equal to 4 per cent on its outstanding stock, payable directly to its stockholders, together with an additional amount to cover the cost of maintaining its organization, after which it merely existed as landlord and lessor, and had no other income than the rent, was not "doing business" within the meaning of corporation tax act August 5, 1909, imposing an excise upon the doing or carrying on of business in a corporate capacity in a State. (Cambria Steel Co. *v.* McCoach, 225 Fed. 278, 1915.)

13. Where railroad companies leased their railroads, rolling stock, and other property, and surrendered possession thereof to the lessee, and the lessee thereupon assumed and maintained entire control and operation of the roads, the lessors agreeing to maintain their corporate existence in order to hold title to the properties and to exercise their power of eminent domain in acquiring additional property when the lessee might so request and furnish the money therefor, and the lessee agreeing to pay the taxes and interest upon the bonded indebtedness of the companies, and to pay dividends to the lessor's stockholders at an agreed rate, the acquisition of property by the lessors by purchase and condemnation pursuant to the request and direction of the lessee, which property was paid for with money furnished by the lessee and was immediately delivered into the possession of the lessee and used by it in operating the roads under the terms of the leases, was not such a doing of business as made the lessors liable for the special excise tax imposed by act August 5, 1909 * * * providing, etc., as corporate acts performed by a corporation in the exercise of its primary franchises, as the maintenance of its corporate existence or which relate strictly to the internal affairs of the corporation and do not include the exercise of its secondary franchises, do not constitute "doing business" within the statute, and though the acts of purchasing and condemning property were both corporate and business acts, the corporations merely acquired the instrumentalities to do the thing and to carry on the business for which they were incorporated, and moreover "net income" imports a gross income, and the difference between the two implies the expenditure of income for some corporate purpose, as that of carrying on or doing the business for which the corporation is organized, and such corporations received no income from railroads operated by them, and expended none in the operation of railroads or for any other purpose. (Lewellyn *v.* Pittsburgh, B. & L. E. R. Co., 222 Fed. 177, 1915.)

14. During the greater part of the year 1910 plaintiff, a railroad company, owned a line of railroad which, with its rolling stock and equipment, was leased and operated by the lessee, which was obligated by the lease to pay all expenses of maintenance and renewal, taxes on the property, and other incidental expenses, but was entitled to retain from the rental the cost of certain permanent improvements made. During such time the lessor maintained its offices, transferred stock, collected and deposited the rental, and expended such sums as were necessary in maintaining its corporate existence, including the State corporation tax. Before the end of the year the lease was canceled by mutual consent, and the lessor immediately sold and transferred all of the property and from the proceeds paid its bonded and other indebtedness. *Held*, That the lessor was not "engaged in

business" during the year, within the meaning of corporation tax act August 5, 1909 * * * and that it was not subject to the excise tax imposed thereby. (Miller *v.* Snake River Valley R. Co., 223 Fed. 946, 1915.)

15. A lessor company, by issuing bonds at the lessee's request, in accordance with provisions in the lease, and in exercising the right of eminent domain to obtain additional land necessary for the operation of the leased road, at lessee's expense and under its direction, was not doing business within the meaning of the act. (New York Central & H. R. R. Co., *v.* Gill, 219 Fed. 184, 1915, C. C. A., reversing N. Y. C. & H. R. R. Co. *v.* Gill, T. D. 1999, 1914.)

16. Two corporations chartered by special acts of the New York Legislature to construct and operate pneumatic tubes between places in the State for the conveyance of mails, newspapers, and parcels, each owned and operated tubes connecting the general post office in Manhattan with branch offices and different places, and used exclusively for transportation of mails. By the action of the Post Office Department bids were invited for carrying of mails by pneumatic tubes, but subject to the requirement that but one bid should be made for the service of the tubes owned by such two corporations, whereupon one company leased all of its property for a term of years to the other, which secured the contract and performed the required service. *Held*, That such lease was not ultra vires on the part of the lessor, but was valid, and that on its execution the lessor ceased doing business within the meaning of the corporation tax act of August 5, 1909 * * * and was not subject to the excise tax thereby imposed.

Power of attorney is one method of enabling leasing companies to transact business formerly done by granting companies and does not make leasing company agent of lessor company.

A corporation, unless prohibited by explicit terms in its grant of power, may let its property for limited term of years; the lessee is not agent of lessor; the power to sell implies the power to lease and such lease is valid although not authorized by charter. (New York Mail and Newspaper Trans. Co. *v.* Anderson, C. C. A. in 234 Fed. 590, 1916, and N. Y. Pneumatic Service Co. *v.* Anderson (affirms dec. of D. C.)

17. A gas company, which has leased its plant and all other physical property for a term of years, the business for which it was incorporated being carried on by its lessee, is not "carrying on or doing business" within the meaning of this act and subject to the tax thereby imposed, although it retains its franchise and organization, and receives and disburses its income, and under the terms of the lease bears the expense of alterations, improvements, and additions to its plant made during the term, and also during the term has applied for and

obtained from the legislature amendments to its special charter. (Waterbury Gaslight Co. *v.* Walsh, 228 Fed. 54, 1916.)

18. A railway company leased its mines, railroads, and other property, but thereafter maintained an office for the transaction of business, maintained its corporate existence and organization by the annual election of officers, and received an income in the shape of rental, and distributed dividends to its stockholders. It held itself in readiness to resume the operation of its properties if the leases should be violated by the lessees, and in such leases it reserved the right to develop the forests on its land, to remove timber, and to mine everything underlying its properties except coal. It made annual returns of its income, and kept and maintained stock books for the transfer of its capital stock and the transactions of other business. *Held*, That these acts did not constitute a "doing of business," so as to subject the corporation to the corporate excise-tax act, as it is not the power to act, but actual activities in certain directions, which constitute a "doing of business," and the corporation was not doing business as a common carrier which was the prime object of its incorporation. (State Line & S. R. Co. *v.* Davis, 228 Fed. 246, 1916.)

19. A corporation which, having leased all its property and franchises, except its franchise to be a corporation, thereafter affirmatively exerts its power for the acquisition of additional franchise rights, is "doing business," so as to be subject to the excise tax, under this section. (Public Service Ry. Co. et al. *v.* Herold, 227 Fed. 490, 1915. *Reversed* in Public Service Ry. Co. *v.* Herold, 229 Fed. 902, 906, 1916.)

20. A corporation, though it has leased its electric power plant and all its property and franchises, except the franchise to be a corporation, is "doing business," and so subject to the excise tax, under this section, one of the express purposes of its incorporation being to lease such plants. (Public Service Elec. Co. et al. *v.* Herold, 227 Fed. 491, 1915. *Reversed* by Pub. Service Ry. Co. *v.* Herold, 229 Fed. 902, 906, 1916, on this point.)

21. A corporation which leases its business as it exists, but in doing so preserves a right to extend such business for the benefit of the lessee, if the lessee requests it, is thereafter "doing business," and so subject to the excise tax, under act August 5, 1909, where it exerts such reserve power in a substantial way, so as to acquire additional property, though doing so for the benefit of the lessee as well as itself. (Public Service Ry. Co. *v.* Herold, 227 Fed. 494, 1915. *Reversed* in Pub. Service Ry. Co. *v.* Herold, 229 Fed. 902, 906, 1916.)

22. Where a corporation leased its property, franchises, rights, and privileges, the lessee agreeing to make extensions to the lessor's lines of railway, etc., and the corporation performed no acts save to receive

rentals, it was not liable to corporation taxes, under this act, because not "doing business." (Public Service Co. et al. *v.* Herold, 227 Fed. 500, 1915. Affirmed by Pub. Service Ry. Co. *v.* Herold, 229 Fed. 902, 906, 1916.)

23. Corporation tax law (act Aug. 5, 1909, clause 1) * * * imposes such excise tax, not because of every act performed by a corporation under its incidental powers, but upon the privilege of doing and carrying on the business for which the corporation is organized, and when it ceases the conduct of such business by turning it over to be carried on by another it ceases to be subject to the tax so long as it commits no act by which the resumption of its business is to be inferred.

A corporation authorized by its charter to "manufacture, buy, sell, lease, and let power plants and generating stations for the manufacture and distribution of electric current" is not, because a part of its authorized business is the leasing of property, carrying on or doing business within the meaning of the corporation tax law, where by a lease it divested itself of all of its property, and has since merely maintained its entity and collected and disbursed the rents for the demised property. (Public Service Co. *v.* Herold, 229 Fed. 902, 1916. *Reversing* Pub. Service Ry. Co. *v.* Herold, 227 Fed. 494; Pub. Service Ry. *v.* Herold, 227 Fed, 490; Pub. Service Elec. Co. et al. *v.* Herold, 227 Fed. 491. Affirming Pub. Service Ry. Co. et al. *v.* Herold, 227 Fed. 500; Pub. Service Gas Co. et al. *v.* Herold, 227 Fed. 496, 1915.)

24. A gas company leased all of its property, the contract of lease providing that the lessee should assume the company's contracts and should be entitled to use the company's name whenever necessary to have the benefit of its franchises. It was also agreed that the lessor's plan should be maintained by the lessee, who should make any necessary or advisable extensions. The company retained its corporate organization, paying secretary's salary, director's fees, and for books and postage used in the distribution of dividends and the payment of interest on bonds. No new bonds, however, were issued, although stock owned by the company in another corporation was voted. *Held*, That the company was not "doing business" within this act, and so was not liable to corporation taxes. (Public Service Gas Co. et al. *v.* Herold, 227 Fed. 496, 1915. Affirmed by Public. Service Ry. Co. *v.* Herold, 229 Fed. 902, 906, 1916.)

25. In the case of the Rio Grande Junction Ry. Co. *v.* U. S., the Court of Claims held that a corporation doing the business for which it was organized was liable to tax. The court said:

> We do not believe a corporation should be allowed to organize for the ostensible purpose of building and operating a railroad and then lease the road before it was built under such circumstances as to show that that was its original and only purpose, and thereby evade the payment of the corporation tax. (Rio Grande Junction Ry. Co., *v.* U. S., 51 Ct. Cls. 274, 284, 1916.)

26. If the purpose for which the corporation was organized was to build and lease property, the rents derived from such lease are taxable, even though thereby the corporation leases all the property and of necessity goes out of all corporate business excepting the collection and distribution of its rents. (Rio Grande Junction Ry. Co. *v.* U. S., 51 Ct. Cls. 274, 284, 1916.)

27. An operating agreement by which a street railroad company surrenders its own and leased lines to the possession of another company for operation for a term of 999 years, in consideration of annual rentals and the payment of interest on its indebtedness and that of its lessors, does not differ in legal effect from a lease, and the lessor is not subject to the excise tax imposed by the Corporation Tax law (act Aug. 5, 1909) * * * as "doing business" through the operating company as its agent.

A corporation which has ceased to pursue the occupation for which it was organized by reason of the leasing of its property, may continue to exist, and to receive and disburse rentals, and pay or renew its debts, or create new indebtedness, without being subject to the excise tax for "doing business" under such statute. (McCoach *v.* Continental Passenger Ry. Co., 233 Fed., 976, 1916.)

28. The true test of distinction to determine whether a corporation organized for a business purpose is "engaged in business" within the meaning of corporation tax law, act August 5, 1909 * * * so as to be subject to the excise tax thereby imposed is whether it is continuing the body and substance of the business for which it was organized, and in which it set out, or whether it has substantially retired from it and turned it over to another. If the latter appears then its tax exempt status must be tested by the further query whether it had during the critical period done only such acts as are properly and normally incidental to the status of a mere lessor of its property or whether it has exercised its peculiar corporate franchise outside of and beyond the fair scope of that status.

Street and suburban railroad companies which owned and had operated their lines leased the same to an operating company for the full term of their franchises. Thereafter they did only what was necessary to maintain their organization, and collect and disburse their rentals in dividends and otherwise, except that in accordance with the provisions of some of the leases, giving the lessees the right to sell unimportant items of property, which was not needed and to reinvest the proceeds in other property subject to the lease, the lessors joined in conveyances of the property sold; also in one case under the terms of the lease the lessor issued to the lessee treasury stock and bonds previously authorized for improvement purposes, in payment for such improvements made by the lessee, and in another case the lessee brought a suit in the name of the lessor, the

latter having no connection with the case. *Held*, That none of such acts constituted "engaging in business" within the meaning of this act, and that such corporations were not subject to the excise tax imposed thereby. (Traction Co.'s *v.* Collectors of Int. Rev., 223 Fed. 984, 1915.)

29. A railroad corporation which had leased all its property to another, which operated and maintained it, paying a fixed rental to the lessor, is not carrying on or doing business within this act, though such corporation maintained its corporate existence and has an office where it receives the rental and distributes it among its stockholders, and though, as required by the lease, it has during the year made certain improvements on the property, paid for by the sale of old material or by certificates of indebtedness of the lessee, since the expression "doing business" in that statute is one in common use, which has the same meaning applied to a corporation as to a natural person, and does not include one who has retired from business and is merely maintaining property leased by him to another. (Jasper & E. Ry. Co. *v.* Walker, 238 Fed. 533, 1917.)

30. Where a lessee corporation agrees with the lessor for the benefit of the latter's shareholders to pay such shareholders quarterly sums or dividends on dates stated each year during the terms of the lease to registered holders of such shares on the 10th day preceding each date for payment and the agreement was endorsed on certificates of the capital stock of the lessor corporation, *Held*, That lessor corporation was doing business within the meaning of the above act as the lessee company merely relieved lessor of the duty of distribution. (Blalock, Collector, *v.* Georgia Ry. & Elec. Co., 246 Fed. 387, 1917.)

31. A street railway corporation which leased its lines and property to another corporation in 1897 and had not since operated them was not in 1913 "engaged in business" within corporation tax law, August 5, 1909, * * * so as to be subject to the tax imposed by such law. (West End Street Ry. Co. *v.* Malley, 246 Fed. 625, 1917.)

32. The plaintiff corporation to which payments were required to be made by the railroads using the terminal, and which granted concessions and licenses to others than the said stockholding railroads for the transaction of various kinds of business, and which operated facilities for supplying power, heat, light, gas, etc., manufactured by it, was engaged in business. (Boston Terminal Co. *v.* Gill, 246 Fed. 664, 1917, affirming the decision of the district court in T. D. 2428, 1916.)

33. A corporation which has not reduced its activities to owning and holding property and the distribution of its avails, but maintains its organization for continued efforts in pursuit of profit and for such activities as are therein essential, is carrying on business within the meaning of the act.

Respondent corporations, besides receiving and distributing among their shareholders the royalties from a number of outstanding long-term "mining leases," employed another company to inspect the lessee's operations and keep them to their contracts, made some mining explorations at expense on other parts of their properties, sold or leased other parcels and sold some timber, *Held*, That they were carrying on business within the meaning of this act. (Von Baumbach *v.* Sargent Land Co., 242 U. S. 503, 1917.)

34. A railroad corporation leased its property and franchises, for the full term of its charter and any renewal thereof, to another railroad company, the lease being approved by the State Legislature granting the original charter, and providing, not only that the lessor should thereafter maintain its corporate existence, but should issue to the lessee stock, bonds, or other obligations for the completion of a projected branch road and for the construction of any other railroads which the lessee might desire to construct and to cover expenses for the construction or purchase of locomotives, cars, and machinery, the lessee binding itself to pay and discharge such obligations at maturity, *Held*, that the issuance of bonds by the lessor corporation under such provision did not amount to a resumption of business which the lease had transferred or an engaging in business within corporation tax act, August 5, 1909. (Anderson *v.* Morris & E. R. Co., 216 Fed. 83, 1914; followed in 219 Fed. 185, 1915; N. Y. Central & H. R. R. Co. *v.* Gill; 223 Fed. 989, 1915, Traction Co's. *v.* Collectors of Int. Rev.; 229 Fed. 902, 1916, Pub. Service Ry. Co. *v.* Herold; 239 Fed. 739, 1917, Rensselaer & S. R. Co. *v.* Irwin.)

35. The Old Colony Railroad Co., whose demised roads were operated by the New York, New Haven & Hartford Railroad Co. as lessee, and not as agent, *Held* not a corporation "engaged in business" during the years 1909–1912, inclusive, within the meaning of corporation tax law August 5, 1909, sec. 38, and therefore not subject to the imposition of the tax authorized. (Old Colony R. Co. *v.* Gill, 257 Fed. 220, Aug. 6, 1919.)

36. A pipe-line company organized by, and doing business only for, two other pipe-line corporations, *Held*, not merely a convenient agent of these corporations, but to be doing business for profit within corporation tax law. (Associated Pipe Line Co. *v.* United States, 258 Fed. 800, 1919.)

**Dissolved corporations.**

A corporation which has continued in business through a calendar year can not evade liability for the special excise tax imposed by act August 5, 1909, by dissolving before the time when it is required to make a return of said business to the collector of internal revenue

and the assessment of the tax. (United States *v.* General Inspection & Loading Co., 192 Fed. 223, 1911. Affirmed by C. C. A. 204 Fed. 657.)

The tax is one upon doing business in a corporate capacity, and receivers of an insolvent corporation, duly appointed by a court of equity, which corporation was not doing business when the act was passed, and has done no business since, are not within the act, nor required to make returns and pay taxes on the income realized by them while acting as officers of the court and under its direction. (Pennsylvania Steel Co. *v.* New York City Railway Co., 198 Fed. 774, 1912. C. C. A., affirming the decision of the District Court in 193 Fed. 286.)

**Excepted corporations—Public utilities.**

The fact that plaintiff was a public utilities corporation, which, under the laws of the State, was not the owner of the property, but merely intrusted with the use thereof, which it must devote to the public, does not entitle it to more favorable treatment than other corporations; it being a corporation organized for profit, having a capital stock represented by shares, and the act making no exceptions in favor of public utilities. (Union Hollywood Water Co. *v.* Carter, 238 Fed. 329, 1917.)

**Excepted corporations—Charitable organizations.**

Corporations organized under the laws of Minnesota, not for charitable or eleemosynary purposes but for the pecuniary advantage of their shareholders, *Held*, "organized for profit" within the meaning of the corporation tax law of August 5, 1909, and not excepted from tax liability. (Von Baumbach *v.* Sargent Land Co., 242 U. S. 503, 1917.)

**Excepted corporations—Domestic building and loan associations.**

A building and loan association, organized under the laws of Washington (Pierce's Code, secs. 7128, 7130, 7131, 7149, 7154, 7160), which loaned funds to nonmembers, issued preferred or guaranteed interest-paying stock not borrowed upon, is not within the exception in the act subjecting corporations to an annual tax, except building and loan associations organized exclusively for the mutual benefit of members. (Pacific Building and Loan Assn. *v.* Hartson, 201 Fed. 1011.)

A building association is not excluded from the right to such exemption as not one "organized and operated exclusively for the mutual benefit of its members" because it issues both prepaid and installment stock; the prepaid stock being entitled to a fixed dividend, payable however, only out of earnings of the association, though under its plan of operation there might be inequality in the

returns to the prepaying stockholder, etc., since the word "mutual" is not to be construed as synonymous with "equal." (Parkview Building & Loan Assn. *v.* Herold, 203 Fed. 876, 1913. Affirmed in Herold *v.* Parkview Building & Loan Assn., 210 Fed. 577.)

Issuance of prepaid stock does not destroy mutuality. (Parkview Building and Loan Assn. *v.* Herold, 203 Fed. 876, 1913. Affirmed by Herold *v.* Parkview Building & Loan Assn., 210 Fed. 577, 1914.)

*Held,* that the final clause, "no part of the income of which," etc., applies only to the fourth group of corporations named, i. e., religious, etc., corporations, and has no application to building associations which are organized for the express purpose of benefiting their stockholders, but that all such associations, if they come within the terms of the proviso as to organization and operation, are exempted. (Herold *v.* Parkview Building & Loan Assn., 210 Fed. 577, 1914.)

Borrowing money from or loaning money to nonmembers does not deprive domestic building and loan associations of exemption as organized and operated for the mutual benefit of members. (Central Building, Loan and Savings Co. *v.* Bowland and Bellefontaine Building & Loan Co. *v.* McMaken, 216 Fed. 526, 1914. U. S. D. C.)

**Excepted corporations—Fraternal beneficiary societies.**

Fraternal beneficiary associations, not operating under the lodge system, are not included in the exemption from tax set forth in the proviso of subdivision 1 of section 38.

The absence of profit in the operation of such an association is not the criterion as to whether it is within the exemption as a fraternal beneficiary society, but the want of a fraternal side and object which it is in some measure organized to promote. (Commercial Traveler's Life & Accident Assn. *v.* Rodway, 235 Fed. 370, 1913.)

**Foreign corporations.**

Where a foreign corporation owned timber lands in a State and operated a match factory, but sold such timber lands to another company, as well as its plant, the payments to be made in installments, the foreign company to retain title until paid in full, although retaining an attorney in the State to look after its interests and an agent for service of process, as required by State statute, such corporation was not thereafter "doing business" in the State, so as to render the property sold taxable to it under Corporation Tax Act, August 5, 1909. * * * (Bryant & May, Ltd., *v.* Scott, 226 Fed. 875, 1914.)

Where a Canadian corporation, making newspaper paper, sent agents into the United States to solicit purchasers for its product, paying their expenses, hiring desk room in the United States, empowering the salesmen to make written contracts, in part in the United States, subject to the corporation's approval in Canada, and, when

approved, to deliver the contracts, paying rent, storage charges on paper shipped into the United States, and also for work done by checks drawn on a bank in the United States, where the company kept its funds received for goods delivered in the United States to purchasers, and then, to perform its written contracts, shipped paper consigned to itself in the United States to different points, where it hired storage rooms, and had the paper delivered to itself at such rooms, where it stored it in its own name and at its own risk pending delivery, doing so for its own convenience and to insure delivery according to contract, also shipping into the United States and storing in such manner paper to meet anticipated demands, such Canadian company "did business" in the United States and "engaged in business" therein, and also "transacted business" in the United States, so that it was liable to taxation under act of August 5, 1909, and under income-tax law October 3, 1913, chapter 16, section 2, A. subdivision 1, and G (a). (Laurentide Co. *v.* Durey, 231 Fed. 223, 1916.)

**Receivers.**

The tax imposed by section 38, act August 5, 1909, is one upon doing business in a corporate capacity, and receivers of an insolvent corporation, duly appointed by a court of equity, which corporation was not doing business when the act was passed, and has done no business since, are not within the act, nor required to make returns and pay taxes on the income realized by them while acting as officers of the court and under its direction, notwithstanding the property seized did not include the corporate franchise to be a corporation, and its organization was maintained. (Pennsylvania Steel Co. *v.* New York City Ry. Co., 176 Fed. 472, 1910; 193 Fed. 286, 1912; 198 Fed. 774, 1912; and United States *v.* Whitridge and United States *v.* Joline & Robinson, 231 U. S. 144, 1913.)

**SUBDIVISION II, SECTION 38.**

Second. Such net income shall be ascertained by deducting from the gross amount of the income of such corporation, joint-stock company or association, or insurance company, received within the year from all sources, (first) all the ordinary and necessary expenses actually paid within the year out of income in the maintenance and operation of its business and properties, including all charges such as rentals or franchise payments, required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, if any, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; (third) interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of such corporation, joint-stock company, or association or insurance company, outstanding at the close of the year, and in the case of a bank, banking association, or trust com-

pany, all interest actually paid by it within the year on deposits; (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof, or imposed by the government of any foreign country as a condition to carry on business therein; (fifth) all amounts received by it within the year as dividends upon stock of other corporations, joint-stock companies or associations, or insurance companies, subject to the tax hereby imposed: *Provided*, That in the case of a corporation, joint-stock company or association, or insurance company, organized under the laws of a foreign country, such net income shall be ascertained by deducting from the gross amount of its income received within the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia, (first) all the ordinary and necessary expenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States and its Territories, Alaska, and the District of Columbia, including all charges such as rentals or franchise payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year in business conducted by it within the United States or its Territories, Alaska, or the District of Columbia not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, if any, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; (third) interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness, not exceeding the proportion of its paid-up capital stock outstanding at the close of the year which the gross amount of its income for the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia bears to the gross amount of its income derived from all sources within and without the United States; (fourth) the sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof; (fifth) all amounts received by it within the year as dividends upon stock of other corporations, joint stock companies or associations, and insurance companies, subject to the tax hereby imposed. In the case of assessment insurance companies the actual deposit of sums with State or Territorial officers, pursuant to law, as additions to guaranty or reserve funds shall be treated as being payments required by law to reserve funds.

**Deductions.**

BUSINESS EXPENSES.

An ordinary expenditure by a mutual life insurance company for renewal of office furniture and equipment did not constitute assets, but was rather an expense of maintenance and operation, which it was entitled to deduct in determining the net income on which it was taxable under corporation tax act. (Mutual Benefit Life Ins. Co. *v.* Herold, 198 Fed. 199, 1912, and Conn. Mutual Life Ins. Co. *v.* Eaton, 218 Fed. 206, 1914.)

Where the State tax on capital stock of banks falls directly on the stockholders, these taxes can not be legally deducted from gross income in returns made by banks. The tax is not upon the banks, and in paying it they act as agents. (Eliot National Bank *v.* Gill, 210 Fed. 933, 1913, which was affirmed by C. C. A. in 218 Fed., 601, 1914, Eliot National Bank *v.* Gill. Same point similarly decided in National Bank of Commerce in St. Louis *v.* Allen, 211 Fed. 743, 1914,

which was affirmed in National Bank of Commerce in St. Louis v. Allen, 223 Fed. 472, 1915, and in Northern Trust Co. *v.* McCoach, 215 Fed. 991, 1914.)

Where a corporation sells its own bonds at a discount, if a loss sustained thereby is an expense it will not be paid until the maturity of the bonds, and should therefore be prorated over the life of the bonds and not deducted in full in the year in which the bonds were issued.

Government's theory that the discount should be apportioned over the lifetime of the bonds is sustained.

A book charge because of the sale of an issue of bonds at less than par or because of bad debts or for money paid out for charities is not a part of the "expenses actually paid within the year out of income" to be deducted from gross income. (Baldwin Locomotive Works v. McCoach, 215 Fed. 967, 1914. Affirmed in 221 Fed. 59, 1915, C. C. A.) and Chicago & Alton R. R. Co. *v.* U. S. (53 Ct. Cls. 41.)

Expenditures for additions and betterments to the property such as expenditures for sidings or spur tracks are not authorized deductions from gross income.

Payments for labor and materials which go into the actual operating of the road and the property are deductible as operating expenses.

Maintenance means the upkeep or preserving of the condition of the property to be operated and does not mean additions to the equipment, additions to the property, or improvements of former condition of the road.

Where old rails are replaced with new and heavier rails, wooden bridges and culverts with concrete and steel bridges and culverts, the rule is that the cost of renewals with like kind and quality is allowable, but excess cost is not allowable as a deduction. (Grand Rapids & Indiana Ry. Co. *v.* Doyle, 245 Fed. 789, 1915.)

Profits of corporation distributed to stockholders nominally as salaries not deductible from gross income as they do not differ from dividends on stock. (Jacobs & Davies (Inc.) *v.* Collector. Decision of lower court affirmed in 228 Fed. 505, 1915.)

A corporate shipowner is entitled to deduct necessary repairs; that item not being included in "depreciation," which means the lessening in value due to obsolescence, etc. (San Francisco & P. S. S. Co. v. Scott, 253 Fed. 854, 1918.)

DEPRECIATION.

Insurance companies owning securities taken at market value may not, under this act, deduct from gross income as depreciation the net decrease in market value of such securities, as depreciation is limited to the loss in actual use value due to wear and tear reflected in a fall in money value. (Opinion of Judge Hand, U. S. D. C.

So. Dist. of N. Y. 1919, in the case of N. Y. Life Ins. Co. *v.* Anderson.) This case, as reported in 257 Fed. 576, was further heard upon a question of accounting only, and is now on appeal on the point of depreciation allowances.

DEPLETION AND DEPRECIATION—MINING COMPANIES.

A corporation mining ores from its own premises is not entitled to deduct from the proceeds of the ores mined, by way of depreciation under the corporation tax law of 1909, the difference between the gross proceeds of the sales of ores during the year and the moneys expended in extracting, mining, and marketing the ores. (Stratton's Independence (Ltd.) *v.* Howbert, 231 U. S. 399, 1913.)

In determining the net income of a corporation for a given year on which it is subject to excise tax under act August 5, 1909, the corporation is entitled to a "reasonable allowance" for depreciation of its property and under such a provision a mining corporation engaged in extracting ore from its mines is entitled to an allowance for depreciation equal to the value in place of the ore extracted and disposed of during the year. (United States *v.* Nipissing Mines Co., 202 Fed. 803. Affirmed in 206 Fed. 431, 1913.)

The property of a coal mining corporation was depreciated for each ton of coal mined to the amount of 15 cents per ton. *Held,* That the corporation could not be taxed on the theory that the full value of the coal mined represented the income, but was entitled to deduct therefrom such amounts as represented depreciation in the mining property. (Forty Fort Coal Co. *v.* Kirkendall, 233 Fed. 704, 1915.) District court, M. D. Penn.

Proceeds of a sale of ore in a mine considered income and exhaustion or depletion of capital can not be deducted therefrom as depreciation. (Von Baumbach *v.* Sargent Land Co. 242 U. S. 503, reversing decision of the U. S. Dist. Ct. in 207 Fed. 423, and C. C. A. 219 Fed., 31.)

*Depletion of ore bodies.*—For the purpose of determining its net income for the basis of taxation under the act, a mining corporation is not entitled to deduct from its gross income any amount whatsoever on account of depletion or exhaustion of ore bodies caused by its operations for the year for which the tax is assessed. (Goldfield Cons. Mines Co. *v.* Scott, 247 U. S. 126.)

*Deduction of cost value of ore in ground.*—In the ascertainment of its net income under the act, a mining corporation is not entitled to a deduction against gross proceeds from the mining and treatment of ores to the extent of the cost value of the ore in the ground before it was mined, ascertained in compliance with T. D. 1675, 1918. (Id.)

The lessee of mining property may not deduct the proportional value of the ore in place on January 1, 1909, with respect to each

ton of ore mined, as so much depletion of capital assets, but may deduct a proportionate part of the royalty paid in advance. (U. S. v. Biwabik Mining Co., 247 U. S. 116, 1918, Supreme Court affirming the decision of the district court and reversing that of the C. C. A. 242 Fed. 9, 1917.)

DEPLETION AND DEPRECIATION—LUMBER COMPANIES.

In distinguishing preexisting capital from income subject to the act, it is a mere question of method whether a deduction be made from gross receipts in ascertaining gross income, or from gross income, by way of depreciation, in ascertaining net income.

The principle upon which the removal of minerals by mining companies has been held not to produce a depreciation within the meaning of the act is inapplicable to the case of a company engaged in the business of manufacturing and selling lumber from timber supplied by its own timber lands, and which sells the lands incidentally after the timber is removed. (Doyle *v.* Mitchell Bros. Co., 235 Fed. 686, affirmed by 247 U. S. 179, 1918.)

INTEREST.

An investment and mortgage loan company not allowed, as a deduction, the amount paid as interest to purchasers of certain evidence of indebtedness called "debenture bonds" and the amount paid to purchasers of mortgage notes and bonds secured by mortgages on real estate sold and assigned by plaintiff to investors with its guarantee, these mortgages being called "guaranteed real estate securities." (Middlesex Banking Co. *v.* Eaton, 221 Fed. 86; C. C. A. affirming judgment in 233 Fed. 87.)

Interest on bonded or other indebtedness paid within the year is to be deducted from gross income, according to the second clause of sec. 38; but only the interest paid upon such indebtedness to an amount not exceeding the corporation's paid up capital stock. The question was decided by the Supreme Court, decision of Anderson *v.* Forty-Two Broadway (239 U. S. 69) and followed in Boston Terminal Co. *v.* Gill (246 Fed. 664, 1917), C. C. A., affirming decision of the district court. (T. D. 2428.)

Where a corporation carries a current indebtedness exceeding the amount of its paid up capital stock, the interest deductions allowed in determining the net income subject to the corporation tax is limited to so much of the indebtedness as does not exceed the capital.

Congress has power to adopt a basis of distinction between corporations carrying indebtedness that exceeds the amount of the capital and those that do not, and the provision in the corporation tax act limiting the amount of interest deductions to so much of

the indebtedness as does not exceed the capital stock is not an arbitrary classification. (Anderson *v.* Forty-Two Broadway Co. 239 U. S. 69, 1915.) (Reversing 209 Fed. 991 and 213 Fed. 777.)

Interest on unassumed mortgages may be deducted under the provisions of the act. (Annual Report of the Commissioner of Int. Rev. 1915, p. 34. American Real Estate Co. *v.* Marshall.)

The * * * company was organized under a special statute closely defining its organization and powers for the purpose of building and maintaining a union station. As in effect required by the act, its capital stock of $500,000 was subscribed for by the five railroad companies named therein, in equal shares. Such companies were also required to use the station, and to pay therefor, in proportion to the use made of the same, such amounts as should be necessary to pay the expenses of the corporate administration and of maintaining the station, the interest on the company's bonds, which amounted to $14,500,000 and dividends on its stock not exceeding 4 per cent. Such companies were also required in case of foreclosure to pay any deficiency of the bonded debt in the same proportions. The company received a substantial income aside from the payments from the railroad companies from facilities furnished to the traveling public and from leases and concessions. It had never paid any dividends on its stock. It was required to pay a state franchise tax on its capital stock, but the station property was assessed to the railroad companies. *Held*, that the company was a corporation "organized for profit" and "engaged in business," within the meaning of section 38, act of August 5, 1909, and subject to the special excise tax thereby imposed; that its gross income under the act included all sums received from the railroad companies, and that it was entitled to a deduction therefrom on account of interest paid, under clause 2, to the extent only of the interest on so much of its debt as equalled its capital stock of $500,000. (Boston Terminal Co. *v.* Gill, 246 Fed. 664, 1917.)

A corporation which did a brokerage business and bought securities for its customers, who paid only a part of the purchase price, paying interest on balances, the corporation also paying for the securities purchased, only part of the purchase price and owing balances on which it paid interest, including in its return of gross income the difference between the interest received and the interest paid, made an incorrect return under the act of August 5, 1909. Interest received by plaintiff from customers should be included in gross income. Interest may be deducted only to an amount not exceeding the paid up capital stock outstanding at the close of the year. (Altheimer & Rawlings Investment Co. *v.* Allen, collector, 248 Fed., 688.) (Petition for Writ of Certiorari in U. S. Supreme Court dismissed Nov. 11, 1918, 248 U. S. 578.)

Moneys paid a pipe-line corporation by its stockholders. *Held* not payment for capital stock, but advances to corporation, and corporation, having no paid up stock, could not deduct interest on such advances in calculating net income. (Associated Pipe Line Co. *v.* United States, 258 Fed. 800, 1919.)

Money reserved and set aside by book entries each year for the purpose of meeting a loss occasioned by selling bonds below par was not a payment of interest nor did it represent a loss actually sustained within the year—the money not being, in fact, paid out—and hence could not be deducted either as an interest payment on outstanding indebtedness or as a loss of the current year under subdivision 2, section 38, act of August 5, 1909. Bookkeeping entries are not a basis for taxation. (So. Pac. Ry. Co. *v.* Muenter & Wardell (unreported), (C. C. A., 9th Cir., 1919.) See also Chicago & Alton R. R. Co. *v.* U. S. (53 Ct. Cls. 41.)

LOSSES.

In the absence of evidence to the contrary, the profits and losses on sales of real estate, acquired by mutual insurance companies through foreclosure of mortgages securing loans made by them, and carried by said companies as assets at a valuation equal to the original cost to the company, should be treated as having been made or sustained during the year, and the company was chargeable in its gross income with the profits made and entitled to a deduction of the full amount of the losses. (Connecticut Mutual Life Ins. Co. *v.* Eaton, 218 Fed., 206, 207, 1914.) Affirmed in 223 Federal 1022 on another point.

See Southern Pacific Railway Co. *v.* Muenter & Wardell, last case under "Interest deductions" above.

NET ADDITIONS TO RESERVE FUNDS.

Where a mutual insurance company issued supplementary policy contracts, by which the amount due on policies that had matured was paid in annual installments for a given term of years, or during the lifetime of the beneficiary, instead of in one sum, and, to secure such payments, was required by State law to maintain a reserve, it was entitled to deduct such reserve from its income received in determining the amount on which it was liable for excise taxation under corporation tax act, section 38. (Mutual Benefit Life Ins. Co. *v.* Herold, 198 Fed. 199, 1912.)

In case of McCoach *v.* Insurance Co. of North America the Supreme Court (244 U. S. 585, 1917) reversed the decision of the C. C. A. (Insurance Co. of North America *v.* McCoach, 224 Fed. 657, 1915), and affirmed the decision of the district court (218 Fed. 905) holding that a fire and marine insurance company in Pennsylvania is not required by State laws to maintain a reserve against unpaid losses and, therefore, amounts added by it to such reserve may not be de-

ducted in determining the company's net income for purposes of the corporation tax.

Where a mutual life insurance company had obligations on policies termed supplementary contracts, presenting the feature that, when a policyholder died, the beneficiary exercised an option to take the avails of the policy in installments, the general reserve fund was charged with a fixed liability according to the deferred term covered by the option, the inclusion of such contracts, as exhibiting a reserve liability, in the calculation of the annual "net addition to reserve" which might be deducted from the gross income, was warranted under corporation tax act, section 38. (Northwestern Mut. Life Ins. Co. *v.* Fink, 248 Fed. 569, 1917.)

Where a New Jersey corporation engaged in insurance business was required by New Jersey commissioner of banking and insurance to provide reserve for all policies written though premiums were not fully paid, all sums paid into reserve are to be excluded in computing gross income for purpose of taxation under corporation excise tax act. (Prudential Insurance Co. *v.* Herold, 247 Fed. 681.)

Under acts Tennessee 1895, chapter 160, sections 1, 8, 16, relating to insurance companies, reserve funds are not required by law to be so maintained as to include additional sums reserved to satisfy unpaid losses, accrued or prospective, and no deductions for amounts so reserved, though required by the insurance commission, can be allowed under excise tax law August 5, 1909, section 38, in computing a Tennessee company's net income for taxation, though the act provided for deduction of any additions to reserve funds required by law.

When a word which has a known legal meaning is used in a statute, it must be assumed that it is used in its legal sense in the absence of an indication to the contrary; therefore the term "reserve funds," used in excise tax law August 5, 1909, section 38, must be given the signification known in the general law of insurance. (National Life & Accident Insurance Company *v.* Craig, 251 Fed. 524.)

Mutual life insurance company's return under above act should not include premiums and interest due, but not received. Inclusion of supplementary contracts, as exhibiting reserve liability, in calculation of annual net addition to reserve, to be deducted from income of such company, *held* warranted under corporation tax act. Interest accrued on policy loans need not be returned as part of gross income. (Northwestern Mutual Life Insurance Co. *v.* Fink, 248 Fed. 568.)

The exemptions stated of "net additions" to reserve funds was only intended to cover such additions as were *required by law* and not such as business prudence suggested.

The sums released from reserve funds are not exempt from taxation as reserve funds, for when they cease to be reserve funds they are then income. (Maryland Casualty Co. *v.* U. S., 52 Ct. Cls., 201, 1917, pending in U. S. Supreme Court.)

TAXES IMPOSED BY STATES, ETC.

1. Act Pennsylvania June 13, 1907 (P. L. 640), entitled "An act to provide revenue by levying a tax upon the shares of stock of certain classes of corporations," requires such corporations to report to the auditor general the number of shares into which their stock is divided and the actual value thereof, ascertained in the manner prescribed by the act, and provides that on such report or return the auditor general shall assess the shares for taxation at a specified rate based on the actual value, to be determined by ascertaining the aggregate sum of payments on the stock, the surplus, and undivided profits and dividing such sum by a figure representing the total number of shares. It is thereupon made the duty of the executive officers of the corporations to post the tax settlement in the corporation's place of business; and within a specified time, at its option, either to pay the total amount of the tax out of its general funds or collect the same from its stockholders and pay the amount into the State treasury. The act further declares that if the corporation's officers fail to comply with the act, they shall be adjudged in default, and as a penalty the corporation shall be responsible to the State for the tax assessed against the stockholders. *Held* that the tax so assessed was a tax against the property of the individual stockholders and not against either the corporation or its property, and hence was not such a tax as to be deducted from the corporation's return to the United States under corporation tax act (act Aug. 5, 1909) providing for a tax on the net income of corporations, and authorizing the deduction of all sums paid by a corporation within the year for taxes imposed under the authority of the United States or any State. (Northern Trust Co. *v.* McCoach, 215 Fed. 991, 1914; same point similarly decided in Eliot National Bank *v.* Gill, 218 Fed. 601.)

2. A tax levied by a State on the shares of a national bank, and paid by the bank as required by the State statutes, but which under the statute it has the right to recover back from the stockholder, is not a "tax imposed under the authority of the State" on the corporation or its property, within the meaning of corporation tax law August 5, 1909, * * * such as the bank is thereby authorized to deduct from its gross income to ascertain its taxable net income; nor can it be deducted as an expense of the business. (National Bank of Commerce in St. Louis *v.* Allen, 211 Fed. 743, 1914, and affirmed by 223 Fed. 472, 1915.)

3. State, county, and municipal taxes paid by a bank under laws of Florida, 1907, chapter 5596, section 8, constitute a liability of the

stockholders, and are to be deducted from the gross income of the bank, to ascertain the net amount on which the 1 per cent of excise tax under act of August 5, 1909, * * * is to be calculated. (U. S. *v.* Guaranty Trust & Savings Bank, 253 Fed. 291, 1918.)

4. Where taxes on stock owned by a corporation have been paid in its behalf by the corporations in which it owns said stock, the corporation will not be allowed to deduct such payments made in its behalf from its corporation excise tax return. While it is true that a "statute providing for the imposition of taxes is to be strictly construed, and all reasonable doubt in respect thereto resolved against the Government and in favor of the citizen" (Mutual Benefit Life Ins. Co. *v.* Herold (D. C.), 198 Fed. 199, and cases therein cited), no doubtful meaning is here involved. The language of the act is clear and explicit. The allowable deductions in the case of a domestic corporation are plainly set forth: * * * If it had been the intention to permit such a deduction as defendant urges, the act would have provided that there be included "all sums paid by it or in its behalf within the year * * * ." (United States *v.* Aetna Life Ins. Co., 260 Fed. 333, 1919.)

**Income.**

1. Income, within the meaning of section 38 * * * of course need not be such an income as would have been taxable as such. (But see C. C. C. & St. L. Ry. Co. *v.* U. S. 242 Fed. 18.) (Stratton's Independence *v.* Howbert, 231 U. S. 399, 416, 1913.)

1a. Income, within the meaning of the corporation tax law of 1909 includes the proceeds of ores mined by a corporation from its own premises. (Stratton's Independence *v.* Howbert, 231 U. S. 399, 400, 1913.)

2. So-called "dividends" paid annually to policyholders by a mutual life insurance company doing business on the level-premium plan, which arise from the excess of premiums collected during previous years over actual ascertained requirements, are not taxable as part of the company's "net income" under the act of August 5, 1909, so far as the same were used to reduce subsequent premiums, the same having been once taxed as a part of the income of the year when received. Such rule, however, does not apply to a "dividend" declared in the case of a full-paid participating policy, wherein the policyholder has no further premiums to make, which dividend constitutes a participation in the profits and income of the invested funds of the company. (Mut. Ben. Life Ins. Co. *v.* Herold, 198 Fed. 199, 1912; affirmed 201 Fed. 918, 1913; pet. for writ of certiorari denied 231 U. S. 755, 1913.)

3. In case of a life insurance company, which, although a stock company, conducts a mutual department, but collects premiums from the participating policyholders on the level-premium plan, and

at the end of the year, when the cost of carrying the policy has been ascertained, credits the policyholder with the excess paid, which he may have applied in reduction of the next premium, to purchase additional insurance, to shorten the premium-paying period of his policy, or to accelerate its maturity in case of an endowment policy, the surplus so applied is not a "dividend," within the meaning of the act, but represents nothing more than the excess of loading of the premium, which is returnable in some form to the policyholder. (Connecticut Gen. Life Ins. Co., *v.* Eaton, 218 Fed. 188, 1914; affirmed in 223 Fed. 1022, 1915.)

4. In computing the excise tax due from an insurance corporation, it was improper to include in the gross income accrued, but unpaid, interest on investments represented by unmatured interest coupons payable in the future. (Insurance Co. of North America *v.* McCoach, 218 Fed. 905, 1914.) (This point not appealed.)

5. The word "income," as used in such act, meant that which had "come in" or had been already received, and that the net income so taxable should be determined on a cash, as distinguished from a revenue, basis, and did not include uncollected and deferred premiums and interests, accrued and due, but not actually received. (Mutual Ben. Life Ins. Co. *v.* Herold, 198 Fed. 199, 1912; and Connecticut Mut. Life Ins. Co. *v.* Eaton, 218 Fed. 206, 207, 1914; affirmed in 223 Fed. 1022, 1915.)

6. An increase in the book value of the assets of a corporation by a revaluation of property does not constitute any part of the gross amount of its "income received within the year." On the other hand, a book charge because of the sale of an issue of bonds at less than par, or because of bad debts or for money paid out for charities, is not a part of the "expenses actually paid within the year out of income" to be deducted from gross income. (Baldwin Locomotive Works *v.* McCoach, 215 Fed. 967, 1914; affirmed in 221 Fed. 59, 1915, C. C. A.) and Chicago & Alton R. R. Co. *v.* U. S. (53 Ct. Cls. 41); also U. S. *v.* Alpha Portland Cement Co. (257 Fed. 432.)

7. Increase in book value of securities held by a banking and trust company does not constitute income received during the year, but should be treated as increase of capital. (Industrial Tr. Co. *v* Walsh, 222 Fed. 437, 1915.) U. S. D. C.

8. Where amounts which should have been charged to the depletion of corporate assets were carried in a surplus account, income taxes imposed by corporation excise tax law can not be based on such amounts, for that would allow the basing of taxes on mere bookkeeping. (Forty Fort Coal Co. *v.* Kirkendall, 233 Fed. 704, 705, 1915.)

8*a*. A corporation desired to increase its capital without using new money. Bookkeeping entries evidenced a cash transaction of

selling property of old corporation to a new one but no income was received, it being merely a reorganization. (U. S. *v.* Alpha Portland Cement Co., 257 Fed. 432.)

9. The word "income" in corporation tax act, imposing an excise tax measured by income, means the same as in prior laws imposing a tax on income. (Cleveland, C. C. & St. L. Ry. Co. *v.* United States, 242 Fed. 18, 1915.) (This case was affirmed in 247 U. S. 195, on the question of profit on sales of property acquired prior to Jan. 1, 1909, and sold afterwards.)

10. See case 2, Income. Same point similarly decided by District Court of Connecticut in Connecticut General Life Insurance Company *v.* Eaton (218 Fed. 188), and in Connecticut Mutual Life Insurance Company *v.* Eaton (218 Fed. 206), both cases being affirmed by C. C. A. in 223 Federal 1022, 1915.

11. In the absence of evidence to the contrary, the profits and losses on sales of real estate, acquired by mutual insurance companies through foreclosure of mortgages securing loans made by them, and carried by said companies as assets at a valuation equal to the original cost to the company, should be treated as having been made or sustained during the year, and the company was chargeable in its gross income with the profits made, and entitled to a deduction of the full amount of the losses. (Connecticut Mutual Life Ins. Co. *v.* Eaton, 218 Fed. 206, 207, 1914. Affirmed in 223 Fed. 1022, 1915.)

12. Only premiums actually received in cash during the year, and not premiums accruing or becoming due, but not paid within the year, nor money previously received in payment of a premium, but applied within the year to pay a different premium, or a renewal policy, instead of a policy holder, on expiration of his policy, taking his expiration return premium, or dividend in cash as he had a right to do, are "income received within the year" by a mutual insurance company, within excise tax act, section 38, clause 2; an estimation on a "cash," as opposed to a "revenue," basis being contemplated by the act. (Lumber Mutual Fire Ins. Co. *v.* Malley, 256 Fed. 380, 1916.)

Increase or decrease in book value of bonds held by a mutual insurance company as investment does not affect "income received within the year," within excise tax act, section 38, clause 2. (Id.)

13. Income may be defined as the gain derived from capital, from labor, or from both combined. (Connecticut Gen. Life Ins. Co. *v.* Eaton, 218 Fed. 188, 1914, and Stratton's Independence *v.* Howbert, 231 U. S. 399, 1913; but see Maryland Casualty Co., 52 Ct. Cls., 201, 1917, pending in U. S. Supreme Court.)

14. A mutual life company is not under necessity to return as part of gross income under corporation tax act, section 38, interest accrued on policy loans. (Northwestern Mut. Life Ins. Co. *v.* Fink, 248 Fed. 568, 1917.)

15. The fact that in the ascertainment and apportionment of dividends to its policyholders a mutual life insurance company acted obediently to St. Wis. 1915, section 1952, requiring mutual life insurance surpluses to be apportioned annually to policies, does not estop it as against the collector of internal revenue, or avail against its contention that such dividends were not income within this act.

Mutual life company's return under section 38, imposing excise tax on insurance companies of 1 per cent on net income above $5,000 should not include premiums and interest due but not received.

So-called dividends of a mutual life insurance company doing business on the level-premium plan, consisting merely of the portion of the premium charged in excess of the cost of insurance, returned annually to the policyholders after the first year, so far as they were used to reduce subsequent premiums, were not "income received," and were not subject to taxation. (Northwestern Mutual Life Ins. Co. *v.* Fink, 248 Fed. 568, 1917.) See similar decision in case 10 on income.

16. An insurance company is obligated to report in full the total sums received in cash, both amounts received at the home office, and those paid to its lawful agencies during the calendar year.

Income means what has come in, or receipts.

Reserve funds when released are in their very essence income. (Maryland Casualty Co. *v.* U. S., 52 Ct. Cls. 201, 1917, pending in U. S. Supreme Court; Chicago & Alton R. R. Co. *v.* U. S., 53 Ct. Cls. 41.)

17. Plaintiff was a public waterworks company, which received from its consumers amounts for service connections and extensions, the greater part of which it expended in making the connections and extensions. It sues to recover the tax paid under protest on the amount of such receipts without deduction of the expenditures. *Held*, that such receipts were part of the corporation's "gross income," and did not fall within any of the deductions provided for, and that plaintiff was liable for the tax on the full amount of such receipts, which, in fact, were invested in permanent improvements, adding to the value of the property.

The fact that plaintiff was a public utilities corporation, which, under the laws of the State, was not the owner of the property, but merely entrusted with the use thereof, which it must devote to the public, does not entitle it to more favorable treatment than other corporations; it being a corporation organized for profit, having a capital stock represented by shares, and the act making no exceptions in favor of public utilities.

Nor does the fact that the State commission had ruled that service connections paid for by consumers were not to be included within the valuation of the company, on which it was entitled to a fair

return, show that payments for those connections are not to be included as part of the corporation's gross income. (Union Hollywood Water Co. *v.* Carter, 238 Fed. 329, 1917.)

18. The "mining leases" involved in these cases were not equivalent to sales of property, and the moneys paid by the lessees to the respondents were not converted capital, but rents or royalties, and as such were income proper to be included in measuring their taxes under the corporation tax law. (Von Baumbach *v.* Sargent Land Co., 242 U. S. 503, 1917, reversing 219 Fed. 31. Followed in U. S. *v.* Biwabik Mining Co., 247 U. S. 116.)

19. Actual value, and not book value, must be considered in determining the income.

The amount received from the sale of stock owned by a corporation and carried on its books at a value of $1 *held* not taxable as income where the evidence showed the stock had a greater value.

"Income" means the flow of capital service, and is not synonymous with receipts. (United States *v.* Guggenheim Exploration Co., 238 Fed. 231, 1917.)

20. A railroad corporation purchasing stock in another corporation for investment prior to January 1, 1909, is taxable with respect to so much of the profit upon the sale of the stock as accrued after December 31, 1908. (C., C., C. & St. L. Ry. Co., *v.* United States, 242 Fed. 18, 1917.) Affirmed by Supreme Court in 247 U. S. 195, 1918.

The market value of the stock on December 31, 1908, may be determined by an inventory taken as of that date, and the stipulated fact of the market value of the stock on that date may be accepted as supplying the lack of an inventory. Id.

21. Where a New Jersey corporation engaged in insurance business was required by New Jersey commissioner of banking and insurance to provide reserve for all policies written though premiums were not fully paid, all sums paid into reserve must be excluded in computing corporate income for taxation. (Prudential Ins. Co. *v.* Herold, 247 Fed. 681, 1918.)

So-called dividends paid by stock company engaged in writing insurance, to nonparticipating stockholders, can not be considered in computing company's income for taxation under corporation excise tax act of 1909. Id.

22. The act employs the term "income" in its natural and obvious sense, as in quoting something distinct from principal or capital and conveying the idea of gain or increase arising from corporate activities.

While a conversion of capital may result in income, in the sense of the act, where the proceeds include an increment of value, such is not the case where the increment existed when the act took effect.

In distinguishing preexisting capital from income subject to the act it is a mere question of method whether a deduction be made from gross receipts in ascertaining gross income, or from gross income, by way of depreciation, in ascertaining net income.

Before the corporation tax act a lumber company bought timberland to supply its mills, and after the act it manufactured part of the timber into lumber, which it sold. *Held*, that the amount by which the timber so used had increased in value between the date of purchase and the effective date of the act was not an element of income to be considered in computing the tax.

The income is to be determined from the actual facts, as to which the corporate books are only evidential. (Doyle *v.* Mitchell Bros. Co., 235 Fed. 686, affirmed in 247 U. S. 179, 1918.)

23. A corporation engaged in the brokerage business, which bought and carried securities for customers on margins, receiving interest payments from them on account of the margins, must list all such interest as part of its gross income, and in computing its net income can not, though it incurred indebtedness for the purchases and paid interest on the balance due, deduct interest on such indebtedness in excess of the amount of its paid-up capital, for such indebtedness was that of the corporation, and not its customers. (Altheimer & Rawlings Inv. Co. *v.* Allen, 248 Fed. 688, 1918.) Judgment of the United States District Court, 246 Fed. 270, affirmed. (Certiorari denied in U. S. Supreme Court, Nov., 1918, 248 U. S. 578.)

24. Whether the determination of the capital assets on December 31, 1908, should be made by taking an inventory upon the basis of market values then existing, or whether the entire increment accruing between the time of acquiring and the time of disposing of the assets should be prorated as if it had arisen through a series of gradual and imperceptible augmentations is a matter of detail to be settled according to the best evidence obtainable and in accordance with valid departmental regulations. The act measured the tax by the income received within the year for which the assessment was levied, whether it accrued within that year or in some preceding year while the act was in effect; but it excluded all income that accrued prior to January 1, 1909, although afterwards received while the act was in effect. (Hays *v.* Gauley Mt. Coal Co., 247 U. S. 189, 1918. Reversing 230 Fed. 110 and affirming decision of the district court.)

25. Interest payments of railway companies which organized and purchased stock of a terminal railway company on account of mortgage given by such terminal company *held* part of terminal company's income for purpose of determining the amount of its tax under the corporation excise tax act of August 5, 1909. (Houston Belt & Terminal Ry. Co. *v.* United States, 250 Fed. 1, 1918, C. C. A. affirming decision of the district court.)

26. The term "income" must be accepted as those more or less periodic earnings, as distinguished from permanent sources of wealth; hence, where the sole stockholder of a corporation which furnished the capital released a debt in favor of the corporation, such sum should be treated as capital rather than income, though such a release can not be treated as a mere matter of bookkeeping, but as adding to the corporate assets. (United States *v.* Oregon-Washington R. & Nav. Co., 251 Fed. 211, 1918.)

27. Under corporation tax act August 5, 1909, where property is sold by a corporation at an advance over the original purchase price, the amount of such advance is a gain or profit received during the year, for the purpose of computing its net income. (Scott *v.* Schwab, 255 Fed. 57, 1919.)

28. Where life insurance companies conducted on the mutual plan issue policies providing for a definite premium, which is usually fixed somewhat above the amount required to insure safety, and when a certain time has passed and it is found that a less sum may safely be taken for a specific year, the premium for that year is reduced to the lower sum, and the insured is allowed to invest the difference, if he care to do so, in additional paid-up insurance such amount of excess premium returned to the policyholder is not taxable as net income of the insurance company. In company bookkeeping the premiums are frequently entered at their full amount and the amounts of the rebate are entered as "dividends." They are in no true sense dividends, however they may be called, but abatements of premium. (Opinion of Judge Hand in New York Life Ins. Co. *v.* Anderson, U. S. D. C. So. Dist. of New York, 1919.) This case as reported in 257 Fed. 576 was further heard on a question of accounting only and is now on appeal on a question of so-called dividends. (See also case 3, this heading, on the authority of which Judge Hand relied.)

Income of insurance companies, see cases 2, 3, 4, 5, 10, 11, 12, 13, 14, 15, 16, 21, 28—Income.

Income of mining companies, see cases 1, 1a, 13, 18—Income.

**"Paid-up capital stock."**

After citing the cases of Central Bonding & Casualty Insurance Co. *v.* Mosely (174 S. W. 1037), Williams *v.* Brewster (117 Wis. 370), Willis *v.* St. Paul Sanitation Co. (16 L. R. A. 281), Houston Belt & Terminal Co. *v.* United States (250 Fed. 1), Altheimer & Rawlings Investment Co. *v.* Allen (248 Fed. 688), Boston Terminal Co. *v.* Gill (246 Fed. 664), Armstrong *v.* Union Trust & Savings Bank (249 Fed. 268), and Anderson *v.* Forty-Two Broadway (239 U. S. 69), the court continued:

Therefore the conclusion is imperative, after a careful analysis of the law and a consideration of the principles involved in all cases cited by both sides, that the "paid-up capital stock" of the corporation, as used in section 38 of the act, means

such an amount received by the corporation as does not exceed the par value of the outstanding shares plus the amount received for any part-paid stock, and that it does not mean the aggregate amount received by the corporation for the shares, the full-paid stock receipts, and part-paid stock receipts issued by it even though said sum be in excess of the par value. (U. S. *v.* N. Y., N. H. & H. R. Co.) T. D. 2896 (U. S. D. C. Conn., 1919.)

Premiums received by a corporation for the sale of its stock are not a part of its outstanding capital stock and should not be added as a part of such corporation's outstanding paid-up capital stock in determining the deduction to be made in assessing corporation excise tax under section 38 of the act of August 5, 1909. (Decision of Judge Bingham, U. S. D. C., Dist. of Mass., 1919. Unreported to date—October, 1919. Case of United States *v.* Boston & Maine Railroad.)

### SUBDIVISION III, SECTION 38.

Third. There shall be deducted from the amount of the net income of each of such corporations, joint stock companies or associations, or insurance companies, ascertained as provided in the foregoing paragraphs of this section, the sum of five thousand dollars, and said tax shall be computed upon the remainder of said net income of such corporation, joint stock company or association, or insurance company, for the year ending December thirty-first, nineteen hundred and nine, and for each calendar year thereafter; and on or before the first day of March, nineteen hundred and ten, and the first day of March in each year thereafter, a true and accurate return under oath or affirmation of its president, vice president, or other principal officer, and its treasurer or assistant treasurer, shall be made by each of the corporations, joint stock companies or associations, and insurance companies, subject to the tax imposed by this section, to the collector of internal revenue for the district in which such corporation, joint stock company or association, or insurance company has its principal place of business, or, in the case of a corporation, joint stock company or association, or insurance company organized under the laws of a foreign country, in the place where its principal business is carried on within the United States, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, setting forth (first) the total amount of the paid-up capital stock of such corporation, joint stock company or association, or insurance company, outstanding at the close of the year; (second) the total amount of the bonded and other indebtedness of such corporation, joint stock company or association, or insurance company at the close of the year; (third) the gross amount of the income of such corporation, joint stock company or association, or insurance company received during such year from all sources, and if organized under the laws of a foreign country the gross amount of its income received within the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia; also the amount received by such corporation, joint stock company or association, or insurance company within the year by way of dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax imposed by this section; (fourth) the total amount of all the ordinary and necessary expenses actually paid out of earnings in the maintenance and operation of the business and properties of such corporation, joint stock company or association, or insurance company within the year, stating separately all charges such as rentals or franchise payments required to be made as a condition to the continued use or possession of property, and if organized under the laws of a foreign country the amount so paid in the maintenance and operation of its business within the United States and its Territories, Alaska, and the District of Coumbia; (fifth) the total amount of all

losses actually sustained during the year and not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; and in the case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, all losses actually sustained by it during the year in business conducted by it within the United States or its Territories, Alaska, and the District of Columbia, not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve fund; (sixth) the amount of interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of such corporation, joint stock company or association, or insurance company, outstanding at the close of the year, and in the case of a bank, banking association, or trust company, stating separately all interest paid by it within the year on deposits; or in case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, interest so paid on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year which the gross amount of its income for the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia, bears to the gross amount of its income derived from all sources within and without the United States; (seventh) the amount paid by it within the year for taxes imposed under the authority of the United States or any State or Territory thereof, and separately the amount so paid by it for taxes imposed by the Government of any foreign country as a condition to carrying on business therein; (eighth) the net income of such corporation, joint stock company or association, or insurance company, after making the deductions in this section authorized. All such returns shall as received be transmitted forthwith by the collector to the Commissioner of Internal Revenue.

## SUBDIVISION III.—RETURNS.

**Insufficient net income.**

All corporations of the kind specified in the act as subject to the tax were bound to file returns, though their net profits were not sufficient to render them liable to the tax. (United States *v.* Military Construction Co., 204 Fed. 153, 1913, and United States *v.* Acorn Roofing Co., 204 Fed. 157, 1912.)

**Receiver's liability.**

The tax is one upon doing business in a corporate capacity, and receivers of an insolvent corporation, duly appointed by a court of equity, which corporation was not doing business when the act was passed, and has done no business since, are not within the act nor required to make returns and pay taxes on the income realized by them while acting as officers of the court and under its direction. (Pennsylvania Steel Co. *v.* New York City Railway Co., 198 Fed. 774, 1912. C. C. A. affirming the decision of the district court in 193 Fed. 286.)

Under corporation act, New Jersey (P. L. 1896, p. 295), sections 53–55, which provide that corporations, however dissolved, are "continued bodies corporate for the purpose of prosecuting and defending suits by or against them and of enabling them to settle and close their affairs," but may not continue their business, and make the directors trustees to settle the business, the officers of a corporation which has dissolved after becoming subject to the special tax imposed by act of August 5, 1909, on its business of the preceding year, who are also directors, have authority, and it is their duty, to make the return of such business required by the act. (United States *v.* General Inspection & Loading Co., 192 Fed. 223, 1911.) (Appealed, on the question of notice only, in 204 Fed. 657.)

**Interest on policy loans.**

A mutual life insurance company is not under necessity to return as part of its gross income * * * interest accruing on policy loans, as such loans and the interest are not obligations which the policyholder is bound personally to liquidate with interest. (Northwestern Mutual Life Ins. Co. *v.* Fink, 248 Fed. 569, 1917.)

**Accrued interest.**

A mutual life insurance company's tax return under corporation tax act * * * should not include premium and interest items accrued and due but not actually collected and received. (Northwestern Mutual Life Ins. Co. *v.* Fink, 248 Fed. 569, 1917.)

### SUBDIVISION IV, SECTION 38.

Fourth. Whenever evidence shall be produced before the Commissioner of Internal Revenue which in the opinion of the commissioner justifies the belief that the return made by any corporation, joint stock company or association, or insurance company is incorrect, or whenever any collector shall report to the Commissioner of Internal Revenue that any corporation, joint stock company or association, or insurance company has failed to make a return as required by law, the Commissioner of Internal Revenue may require from the corporation, joint stock company or association, or insurance company making such return, such further information with reference to its capital, income, losses, and expenditures as he may deem expedient; and the Commissioner of Internal Revenue, for the purpose of ascertaining the correctness of such return or for the purpose of making a return where none has been made, is hereby authorized, by any regularly appointed revenue agent specially designated by him for that purpose, to examine any books and papers bearing upon the matters required to be included in the return of such corporation, joint stock company or association, or insurance company, and to require the attendance of any officer or employee of such corporation, joint stock company or association, or insurance company, and to take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons; and the Commissioner of Internal Revenue may also invoke the aid of any court of the United States having jurisdiction to require the attendance of such officers or employees and the production of such books and papers. Upon the information so acquired the Commissioner of Internal Revenue may amend any return or make a return where none

has been made. All proceedings taken by the Commissioner of Internal Revenue under the provisions of this section shall be subject to the approval of the Secretary of the Treasury.

Where a corporation in its return deducts taxes paid not by it but in its behalf by other corporations on stock owned by it in such other corporations and such deduction is not allowed, as there was no refusal or neglect to make a return within the meaning of the act, no penalty will be allowed. (United States *v.* Aetna Life Ins. Co., 260 Fed. 333, 1919.)

### SUBDIVISION V, SECTION 38.

Fifth. All returns shall be retained by the Commissioner of Internal Revenue, who shall make assessments thereon; and in case of any return made with false or fraudulent intent, he shall add one hundred per centum of such tax, and in case of a refusal or neglect to make a return or to verify the same as aforesaid he shall add fifty per centum of such tax. In case of neglect occasioned by the sickness or absence of an officer of such corporation, joint stock company or association, or insurance company, required to make said return, or for other sufficient reason, the collector may allow such further time for making and delivering such return as he may deem necessary, not exceeding thirty days. The amount so added to the tax shall be collected at the same time and in the same manner as the tax originally assessed, unless the refusal, neglect, or falsity is discovered after the date for payment of said taxes, in which case the amount so added shall be paid by the delinquent corporation, joint stock company or association, or insurance company immediately upon notice given by the collector. All assessments shall be made and the several corporations, joint stock companies or associations, or insurance companies shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assessments shall be paid on or before the thirtieth day of June, except in cases of refusal or neglect to make such return, and in cases of false or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as above provided for, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such corporation, joint stock company or association, or insurance company immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the thirtieth day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of five per centum on the amount of tax unpaid and interest at the rate of one per centum per month upon said tax from the time the same becomes due.

**Notice by mail.**

The notice of assessment required to be given to the corporation may lawfully be given by mail, and a notice so sent by the collector in a franked envelope bearing a return card, addressed to the corporation at the place of its principal office, and not returned, was presumptively received, and the burden rests on the corporation to prove to the contrary, to avoid the penalty for nonpayment within the time prescribed. (United States *v.* General Inspection & Loading Co., 204 Fed. 657, 1913.)

**"False" returns.**

An incorrect return is "false" although made in good faith under a mistake of law, and the Commissioner has power to amend such return even after the tax under the original return has been paid. The corrected assessment is not required to be made within the three years. (Eliot National Bank *v.* Gill, 210 Fed. 933, 1913, and affirmed in C. C. A. decision, 218 Fed. 600, 1914.)

Construing the provisions in subdivisions 3, 4, and 5 together, the word "false" as used in subdivision 5 is not to be construed as meaning intentionally or fraudulently false, but the same as "not true," or the equivalent of "incorrect," and the Commissioner has power in such case to amend a return at any time within three years. (National Bank of Commerce in St. Louis *v.* Allen, 223 Fed. 472, 1915.)

The word "false" as used in section 38 (5), means "untrue" or "incorrect" and does not necessarily mean intentionally or fraudulently false. (United States *v.* Nashville, C. & St. L. Ry., 249 Fed. 678.)

See also Camp Bird *v.* Howbert (248 U. S. 590, reversing 249 Fed. 27.)

**Reassessment.**

Neither the limitation contained in this paragraph nor any other statute of limitations bars an action by the United States to recover the difference between the amount of the tax levied and paid and the amount which should have been levied and paid, if the corporation's return had correctly stated its income. (United States *v.* Minneapolis Threshing Machine Co., 229 Fed. 1019, 1915.)

The three-year clause of section 38 is not a limitation upon the right of the Government to sue for unpaid taxes but a limitation upon the right of the collecting officers to make assessment and to enforce payment by the summary statutory proceedings. (United States *v.* Grand Rapids & Indiana Ry. Co., 239 Fed. 153, 1915.)

The act of August 5, 1909, does not make the remedy by way of a reassessment by the Commissioner exclusive of all other remedies for collection of excise tax imposed on corporations, and suit may be brought under section 3213 Revised Statutes. (United States *v.* Nashville, C. & St. L. Ry., 249 Fed. 678, C. C. A. 1918.) Reversing decision of the district court.

In view of Revised Statutes, section 3213, *Held* that, under act of August 5, 1909, section 38, subdivisions 5, 8, United States may maintain action against corporation for excise taxes based on income omitted, though Commissioner of Internal Revenue made no reassessment, etc., within time prescribed. (U. S. *v.* Nashville, C. & St. L. Ry., 249 Fed. 678.)

Excise taxes under act of August 5, 1909, are specific taxes, differing from State ad valorem taxes, as to which no tax is imposed until the officers act, and no suit for any tax will lie until after such action. (Id.)

**Limitations.**

The three-year clause of section 38 is not a limitation upon the right of the Government to sue for unpaid taxes but a limitation upon the right of the collecting officers to make assessment and to enforce payment by the summary statutory proceedings. (United States *v.* Grand Rapids & Indiana Ry. Co., 239 Fed. 153, 1915.)

Neither the limitation contained in this paragraph nor any other statute of limitation bars an action by the United States to recover the difference between the amount of the tax levied and paid and amount which should have been levied and paid, if the corporation's return had correctly stated its income. (United States *v.* Minneapolis Threshing Machine Co., 229 Fed. 1019, 1915.)

In view of Revised Statutes, section 3213, *Held* that, under act of August 5, 1909, section 38, subdivisions 5, 8, United States may maintain action against corporations for excise taxes based on income omitted, though Commissioner of Internal Revenue made no reassessment, etc., within time prescribed. (U. S. *v.* Nashville, C. & St. L. Ry., 249 Fed. 678.)

The corrected assessment on an incorrect return is not required to be made within the three years. (Eliot National Bank *v.* Gill, 210 Fed. 933, 1913, and affirmed in 218 Fed. 600, 1914.)

**Returns, false.** **(See "False" returns.)**

**SUBDIVISION VIII, SECTION 38.**

Eighth. If any of the corporations, joint stock companies or associations, or insurance companies aforesaid shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation, joint stock company or association, or insurance company shall be liable to a penalty of not less than one thousand dollars and not exceeding ten thousand dollars.

Any person authorized by law to make, render, sign, or verify any return, who makes any false or fraudulent return, or statement, with intent to defeat or evade the assessment required by this section to be made, shall be guilty of a misdemeanor, and shall be fined not exceeding one thousand dollars or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.

All laws relating to the collection, remission, and refund of internal-revenue taxes, so far as applicable to and not inconsistent with the provisions of this section, are hereby extended and made applicable to the tax imposed by this section.

Jurisdiction is hereby conferred upon the circuit and district courts of the United States for the district within which any person summoned under this section to appear to testify or to produce books as aforesaid shall reside, to compel such attendance, production of books, and testimony by appropriate process.

**Collection of Tax by Government.**

Where a corporation's return incorrectly stated its net income and the tax based upon such return had been paid, an action of indebitatus assumpsit would lie to recover the balance of the tax, which should have been levied and paid, without formal assessment of such additional tax. (United States *v.* Minneapolis Threshing Machine Co., 229 Fed. 1019, 1915.)

Evidence sustaining allegations of incorrectness in returns by a corporation subject to excise tax need not be set out in the declaration in a suit to recover such tax. (United States *v.* Nashville, Chattanooga & St. Louis Ry., 249 Fed. 678, C. C. A. (Reversing the district court decision; T. D. 2697.)

A common-law action of debt lies in favor of the Government whenever by accident, mistake, or fraud, taxes have not been paid; thus the Government may recover a personal judgment for a tax whenever there exists a duty to pay, provided another remedy has not been made exclusive by clear and specific declaration. (Id.)

The remedy by suit against the collector where internal revenue taxes have been wrongfully collected under the Federal corporation tax law of August 5, 1909, section 38, is not made exclusive by the provision of that section that all laws relating to the collection, remission, and refund of internal revenue taxes, so far as applicable, are extended to this tax. (United States *v.* Emery, Bird, Thayer Realty Co., 237 U. S. 28.)

The provision in the act of October 3, 1913, that the repeal of existing laws or modifications thereof embraced in the act should not affect any act done or right accruing, or any suit or proceeding had or commenced, in any civil case before such repeal or modification, but all rights and liabilities under such laws should continue and might be enforced in the same manner as if such repeal or modification had not been made was held to be intended to relate only to rights and liabilities in respect to taxes which had accrued under the act of 1909, and not intended to cover excise taxes upon corporations for the months of January and February, 1913, which were imposed by the income tax act, as the constitutional amendment of March 1, 1913, designed to permit taxation of incomes without apportionment was not adopted until March 1; this being apparent from the provision in the act that excise taxes for two months shall be ascertained in accordance with the provisions of section 2 G. Consequently exemptions in the corporation tax act are not applicable to taxes imposed for those two months. (Butterick Co. *v.* United States and Federal Publishing Co. *v.* Same, 240 Fed. 539, 1917; dismissed on motion of United States, 248 U. S. 587.)

No assessment by Commissioner is necessary for collection of Federal taxes, at least in a direct action by United States. (N. Y. Life Ins. Co. *v.* Anderson, 257 Fed. 576.)

INJUNCTION AGAINST PAYMENT.

An action by a director or stockholder against a corporation and its treasurer to enjoin payment of the special excise tax to the Collector of Internal Revenue can not be maintained. The prohibition against enjoining the collection of taxes rests on grounds of public policy and a stockholder can not do indirectly what he can not do directly. The complainant has an adequate remedy at law and application for preliminary injunction is denied. (Straus *v.* Abrast Realty Co., 200 Fed. 327, 1912.) T. D. 1788.

PENALTY.

United States District Court, Western District of Washington, held that the penalty of $1,000 to $10,000 for failure to make return, as prescribed by section 38, act of August 5, 1909, is constitutional. (U. S. of America *v.* Surprise Five, Ten, and Nineteen Cent Store. T. D. 1864.)

The acceptance of a return by the Commissioner of Internal Revenue is not a waiver of the penalty. (Id.)

Penalties for delay are a necessary incident to procuring revenue and should receive an impartial, if not a sympathetic, interpretation. (Id.)

Where a civil action is brought to recover a penalty against delinquent corporations, the jury's verdict must fix the amount of such penalty not less than the minimum, after which the only remedy for the corporations (other than appeal) is an application to the Commissioner of Internal Revenue or the Secretary of the Treasury for a compromise authorized by Revised Statutes, sections 3229, 3469. (United States *v.* Acorn Roofing Co., 204 Fed. 157, 1912.)

Where a corporation in its return deducts taxes paid, not by it, but in its behalf, by other corporations on stock owned by it in such other corporations and such deduction is not allowed, as there was no refusal or neglect to make a return within the meaning of the act, no penalty will be allowed. (United States *v.* Aetna Life Ins. Co., 260 Fed. 333, 1919.)

RECOVERY OF TAXES PAID.

On recovery of a judgment against a collector of internal revenue for the amount of an internal-revenue tax illegally collected, the plaintiff is entitled to have the judgment state that it is with interest. (New York Mail & Newspaper Trans. Co. *v.* Anderson, 234 Fed. 590, 1916.)

The limitation for action to recover an illegally collected excise tax on a corporation as doing business is two years from its payment. (Public Service Elec. Co. et al. *v.* Herold, 219 Fed. 301 and 227 Fed. 491, 1915. This point affirmed by Public Service Ry. Co. *v.* Herold, 229 Fed. 902, 1916, C. C. A.)

Revised Statutes, section 3225, applies to corporation tax act. (Camp Bird, Ltd., *v.* Howbert, 249 Fed. 27, 1918.) Affirming the decision of the district court (T. D. 2366). *Reversed* by Supreme Court in 248 U. S. 590.

Under Revised Statutes, section 3225 (Comp. St., 1916, sec., 5948), brought into corporation tax act, omission by Mutual Life Co. of item from income side of tax return, through treating it as suspense item, *Held* not to bar company's right of action to recover excessive taxes. (Northwestern Mutual Life Insurance Co. *v.* Fink, 248 Fed. 568, 1917.)

Corporation taxes assessed against a railroad, which had leased its properties and was not engaged in business during the years in question were illegal and, having been paid under protest, may be recovered, with interest, from the collector of internal revenue. (Old Colony R. Co. *v.* Gill, 257 F. 220. 1919. Same *v.* Malley.)

In action to recover revenue taxes, such as excise taxes on corporations, rule which denies use of any but statutory remedy has no application to General Government, unless specifically and clearly so stated. (United States *v.* Nashville, C. & St. L. Ry., 249 Fed. 678.)

An action can not be brought against a collector of internal revenue to recover back taxes paid to his predecessor in office. (Philadelphia, H. & P. R. Co. *v.* Lederer, collector, etc., 242 Fed. 492, C. C. A., 1917; also Roberts *v.* Lowe, 236 Fed. 604.)

Act of February 8, 1899, c. 121, 30 Stat., 822, * * * providing that no suit, action, or other proceeding by or against any officer of the United States shall abate by reason of his death, or the expiration of his term of office, but that the court may allow it to be maintained by or against his successor in office, does not authorize an action against a collector of internal revenue to recover back taxes paid to his predecessor in office where no suit, action, or proceeding was pending against such predecessor, and a mere claim for refund of the taxes was not a suit or proceedings against the collector. (Id.)

Part of excise tax illegally exacted and paid under protest to collector of internal revenue may be recovered of his successor in office. (Lumber Mut. Fire Ins. Co. *v.* Malley, 256 Fed. 380.)

3225, Revised Statutes, in its application to taxes collected under corporation tax act does not authorize the recovery of sums paid on a second assessment, where the return was false, but not fraudulent. (Camp Bird, Ltd., *v.* Howbert, 249 F. 27, 1918.) Affirming the decision of the district court (T. D. 2366). *Reversed and remanded* by Supreme Court in 248 U. S. 590.

The plaintiff having understated in its original return the amount for which it was subject to tax is not entitled to recover any part of a second assessment paid, although the original return was made in good faith and without any intention to escape lawful tax. (Camp Bird, Ltd., *v.* Howbert, 249 Fed. 27, 1918.) Affirming the decision of the district court (T. D. 2366). *Reversed* by Supreme Court in 248 U. S. 590.

Section 3225 considered. Company can maintain action to recover back excessive taxes paid. (Northwestern Mutual Life Ins. Co. *v.* Fink, 248 Fed. 568, 1917.)

Section 3225, Revised Statutes, is not invalid in its applicability to the corporation tax act, for it does not destroy uniformity of taxation, applying to all portions of the country alike. (Id.)

The amendment to Revised Statutes, 3225 (sec. 14, act of Sept. 8, 1916), providing that it shall not apply to statements or returns made or to be made in good faith regarding annual depreciation of oil or gas wells and mines, not retroactive in its operation. (Camp Bird, Ltd., *v.* Howbert, 249 Fed. 27, 1918.) Affirming the decision of the district court (T. D. 2366). *Reversed and remanded* by Supreme Court in 248 U. S. 590.

Where a corporation was assessed for corporation taxes under corporation tax act and the same not having been paid, a writ of distraint was issued by the collector, and, the corporation having been notified that the tax would be collected by levy, the deputy collector took from a representative of the corporation the amount of the tax, against the verbal protest of the corporate officer at the time, and a written notice of protest then served, in which the corporation denied that it was liable to tax, the protest was held sufficient to entitle the corporation to recover the amount from the collector, on its being determined that the corporation was not within the law. (Abrast Realty Co. *v.* Maxwell, 206 Fed. 333, 1913.) Appealed on another point, 218 Fed. 457.

Where railroads, seeking to recover from collectors of internal revenue taxes illegally assessed, delayed in pressing their claims on account of an understanding with the collectors that the claims should await the decision of other pending cases, but it became apparent that the question of interest could not be adjusted, and would have to be submitted to the court, the railroads' conduct did not disentitle them to interest for any lack of diligence in prosecution. (Boston & P. R. Corp'n et al. *v.* Gill, 257 Fed. 221, 1916.)

In an action against a collector to recover internal revenue taxes erroneously assessed and paid, errors in the assessment in plaintiff's favor may also be corrected; the United States, which is the real defendent, not being affected by any estoppel which might affect

the officer making the assessment. (New York Life Ins. Co. *v.* Anderson, 257 Fed. 576, 1919.)

A suit to recover taxes alleged to have been illegally assessed and collected under the corporation tax law may be brought directly against the United States in the United States district court under the act of March 3, 1887, known as the Tucker Act, now incorporated in section 24 of the Judicial Code of March 3, 1911. Remedy by suit against the collector is not made exclusive by the provisions of subdivision 8 that all laws relating to collection, remission, and refund of internal revenue taxes so far as applicable are extended to this tax. (United States *v.* Emery, Bird, Thayer Realty Co., 237 U. S. 28, 1915.)

A statement made by a corporation's auditor to an internal revenue agent that the corporation had no paid-up capital stock is admissible in proceedings to recover taxes under section 38 of the act of August 5, 1909. (Associated Pipe Line Co. *v.* United States, 258 Fed. 800, 1919.)

# INCOME TAX.

## ACT OF OCTOBER 3, 1913, SECTION II.

Repealed by act of September 8, 1916, section 24. Provision for refund of taxes collected, act of March 4, 1915, and act of September 8, 1916, section 14 (a). Jurisdiction—Judicial Code, section 24 (1).

## DECISIONS UNDER ACT OF OCTOBER 3, 1913—SECTION II, INCOME TAX.

### GENERAL PROVISIONS.

**Constitutionality.**

The income-tax provisions of the tariff act of 1913 are not unconstitutional by reason of retroactive operation, the period covered not extending prior to the time when the sixteenth amendment was operated; nor are those provisions unconstitutional under the due process provision of the fifth amendment; nor do they deny due process of law by reason of the classifications therein of things or persons subject to the tax. The provisions for collecting income at the source do not deny due process of law by reason of duties imposed upon corporations without compensation in connection with the withholding and collection of tax at source.

When there are differences between the subjects taxed, Congress does not transcend the limit of its taxing power by taxing them differently.

A want of due process of law does not arise from want of wisdom in Congress in levying taxes and thus give the courts power to overrule the action of Congress by declaring it to be unconstitutional.

Arguments as to the expediency of levying a tax which is within the power of Congress to levy are beyond judicial cognizance. (Brushaber *v.* Union Pacific Ry. Co., 240 U. S. 1, 1915. Followed in Dodge *v.* Osborn, 240 U. S. 118, 1916.)

There is no authority for taking taxation of mining corporations out of the rule established by the sixteenth amendment; nor is there any basis for the contention that, owing to inadequacy of the allowance for depreciation of ore body, the income tax of 1913 is equivalent to one on the gross product of mines, and as such a direct tax on the property itself, and therefore beyond the purview of that amendment and void for want of apportionment.

Brushaber case followed as to constitutionality of the act. (Stanton *v.* Baltic Mining Company, 240 U. S. 103, 1916.)

Brushaber case followed to the effect that the provisions of the income-tax act 1913 are not unconstitutional either because not sanctioned by the sixteenth amendment and otherwise beyond the general taxing power of Congress, or because of its retroactive operation for a designated period, or because of discriminations, inequalities, or progressive increases on incomes of individuals or the method provided for computing income of corporations. (Tyee Realty Co. *v.* Anderson, 240 U. S. 115, 1916.)

The unconstitutionality of the law and of the surtaxes which it imposes have been considered and adversely disposed of in Brushaber case, followed herein. (Dodge *v.* Brady, 240 U. S. 122, 1916.)

There is no room for argument as to the general constitutionality of the tax upon returns made in 1914 and estimated or based upon the income of an individual for a certain definite preceding period, even though that period be partially prior to the date of the enactment of the law. If the person is liable for the tax in the future, the method of its computation as estimated upon the past does not invalidate the tax. (Citing Stockdale *v.* Insurance Companies, 87 U. S. 331; Edwards *v.* Keith, 224 Fed. 585, 587, 1915. Affirmed by 231 Fed. 110; see 243 U. S. 638, 1916.)

The claim that the act is unconstitutional if construed to cover dividends, whether in stock or in cash, derived from earnings prior to the sixteenth amendment, is denied in Brushaber *v.* Union Pacific Railroad Co., 240 U. S. 1; Stanton *v.* Baltic Mining Co., 240 U. S. 103; Edwards *v.* Keith, 231 Fed. 110, 243 U. S. 638. See also Memphis & C. R. R. Co. *v.* U. S., 108 U. S. 228; (Towne *v.* Eisner, 245 U. S. 418, 1918.)

**Sixteenth amendment.**

Independently of the operations of the sixteenth amendment, a tax on the product of a mine is not a tax upon property as such because of its ownership, but is a true excise levied on the result of the business of carrying on mining operations. (Stratton's Independence *v.* Howbert, 231 U. S. 399, followed in Stanton *v.* Baltic Mining Co., 240 U. S. 103, 1916.)

Under the sixteenth amendment of the Constitution, Congress has power to tax as income, without apportionment, everything that became income in the ordinary sense of the word after the adoption of the amendment. (Lynch *v.* Hornby, 247 U. S. 339, 1918.)

The sixteenth amendment to the Constitution of the United States does not extend the taxing power to new or excepted subjects, but merely removes all occasion which otherwise might exist for an apportionment among the States of tax laid on income, whether it be derived from one source or another. (Peck *v.* Lowe, 247 U. S. 165, 1918.)

**Construction.**

In the interpretation of statutes levying taxes, it is the established rule not to extend their provisions by implication beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out, and in case of doubt they are to be construed most strongly against the Government. (Haiku Sugar Co. et. al. *v.* Johnstone, 249 Fed. 103, 1918.) And (Gould *v.* Gould, 245 U. S. 151, 1917.)

While taxing statutes are to be strictly construed, this merely means that neither the courts nor the executive may, through judicial or administrative construction, impose a tax not imposed by Congress, and, when Congress had indicated its purpose and intent to tax, the law is not to be strictly construed, but is to be given that construction given to remedial statutes.

In construing a law, the judicial inquiry is not into what enactment Congress should have made, but into what enactment Congress did in fact make.

While an act of Congress must be accepted for the purpose of interpretation in the form in which it was finally passed, and can not be altered or amended to conform to the meaning given it by individual members who advocated its passage, or by a committee which may have discussed it in a report, such expressions of opinion are entitled to weight in construing the law. (Penn. Mut. Life Ins. Co. *v.* Lederer, 247 Fed. 559, 1918. This case was reversed on another point by 258 Fed. 81.)

In case of ambiguity in the income-tax act of 1913, the language is to be construed most strongly in favor of the taxpayer. (United States *v.* Coulby, 258 Fed. 27, 1919.)

The law is so framed as to deal with the gains and profits of a partnership as if they were the gains and profits of the individual partner. (U. S. *v.* Coulby, 251 Fed. 982, Aff. in 258 Fed. 27, 1919.)

**Departmental rulings.**

Regulations of the Treasury Department that unpaid charges for services or contingent income due for the year shall, if good and collectible, be included in return for such year can not interfere with the statutory determination of what is income to be taxed. (Edwards *v.* Keith, 231 Fed. 110, 243 U. S. 638, 1916.)

**Retroactivity.**

The retroactivity of the act to March 1, 1913—a date not prior to the adoption of the sixteenth amendment—is permissible. (Lynch *v.* Hornby, 247 U. S. 339, 1918; Brushaber case, 240 U. S. 1, followed

and approved. Same point similarly decided in Woods *v.* Lewellyn, 252 Fed. 106, 1918.) (See Brady *v.* Anderson, 240 Fed. 665.)

**Applicability of general provisions of law to income tax law.** (Dodge *v.* Osborn, 240 U. S. 118, 1916.)

**Implications.**

Exemptions in a tax law must be clearly expressed and will not be implied or spelled out of equivocal language. (U. S. *v.* Coulby, 251 Fed. 982, affirmed 258 Fed. 27, 1919.)

In the interpretation of statutes levying taxes, it is the established rule not to extend their provisions by implication beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out, and in case of doubt they are to be construed most strongly against the Government. (Haiku Sugar Co. et al. *v.* Johnstone, 249 Fed. 103, 1918; Gould *v.* Gould, 245 U. S. 151, 1917.)

**Enjoining collection of tax.**

(See cases under Par. L, "Restraining injunctions.")

**Revised Statutes.**

Sections 3220, 3224, 3226, 3227, are applicable. (Dodge *v.* Osborn, 240 U. S. 118, 1916.)

**Act of 1894 distinguished.** (Brushaber *v.* Union Pacific Ry. Co., 240 U. S. 1, 1916.)

**Intention of the act.**

It is the evident purpose of the act to refrain from taxing income that accrued prior to March 1, 1913, and to exclude from consideration, in making computation of taxable income for a given year, any income that accrued in the preceding taxable year.

The act is quite different in this respect (that of imposing liability on stockholders in the case of dividends not yet declared) from the income tax act of June 30, 1864, which provides that "the gains and profits of all companies, whether incorporated or partnership, other than the companies specified in this section, shall be included in estimating the annual gains, profits, or income of any person entitled to the same, whether divided or otherwise." (Southern Pacific *v.* Lowe, 247 U. S. 330, 1918. Following Lynch *v.* Hornby, 247 U. S. 339. Reversing 238 Fed. 847.)

**PARAGRAPH A (1).**

A. Subdivision 1. That there shall be levied, assessed, collected, and paid annually upon the entire net income arising or accruing from all sources in the preceding calendar year to every citizen of the United States, whether residing at home or abroad,

and to every person residing in the United States, though not a citizen thereof, a tax of 1 per centum per annum upon such income, except as hereinafter provided; and a like tax shall be assessed, levied, collected, and paid annually upon the entire net income from all property owned and of every business, trade, or profession carried on in the United States by persons residing elsewhere.

INDIVIDUALS.

**Normal tax.**

Where a contract between an insurance company and an agent provides that the agent shall receive as compensation for soliciting insurance, certain specified percentages of premiums paid on policies written through his solicitation for 20 years from date of policy such commissions to accrue only as the premiums were paid to the company, and that liability for any particular commission would terminate if policy ceased to be in force such percentages of premiums for second and subsequent years of the life of policies, issued prior to the enactment of the statute, were income accruing when such premiums were paid and taxable as such. This liability to tax was not affected by the fact that the agent hired subagents and maintained an office force and that his percentage to some extent represented merely deferred returns which he had anticipated and partially expended for office expenses; nor was the liability to the tax affected by the fact that such expenses were paid before the passage of the statute. (Edwards *v.* Keith, 224 Fed. 585, 1915; affirmed 231 Fed. 110; petition for writ of certiorari denied in U. S. Sup. Ct. Mar. 12, 1917.)

**Nonresidents, income from activities carried on in the United States.**

See case 1 (Laurentide Co. Ltd., *v.* Durey) under paragraph G(a).

Where stocks, bonds, and mortgages are owned by a nonresident alien, secured upon property in the United States or payable by persons or corporations there domiciled, the income therefrom being collected for and remitted to such nonresident by an agent domiciled in the United States, if the agent has physical possession of the certificates of stock, etc., such income is taxable under this act. (De Ganay *v.* Lederer, 250 U. S. 376.)

**Retroactivity.**

As the tax is upon the property and not upon the person it makes no difference whether the person is living or dead at the time the act was passed. The act being made retroactive to March 1, 1913, applies to a person who died July 22, 1913, and his executors must make a return. (Brady *v.* Anderson, 240 Fed. 665, 1917.)

**Exportation.**

"* * * it is both nominally and actually a general tax. It is not laid on income from exportation because of its source, or in a discriminative way, but just as it is laid on other income. * * *

At most, exportation is affected only indirectly and remotely. The tax is levied after exportation is completed. * * * Thus what is taxed—the net income—is as far removed from exportation as are articles intended for export before the exportation begins." (Peck *v.* Lowe, 247 U. S., 165, 1918, affirming 234 Fed. 125.)

**Divorced wife.**

A divorced wife is not liable to tax on alimony received. (Gould *v.* Gould, 245 U. S., 151, 1917.)

**Partnership liability.**

(See cases under section G (a)—, "Partnerships."

**PARAGRAPH A (2).**

Subdivision 2. In addition to the income tax provided under this section (herein referred to as the normal income tax) there shall be levied, assessed, and collected upon the net income of every individual an additional income tax (herein referred to as the additional tax) of 1 per centum per annum upon the amount by which the total net income exceeds $20,000 and does not exceed $50,000, and 2 per centum per annum upon the amount by which the total net income exceeds $50,000 and does not exceed $75,000, 3 per centum per annum upon the amount by which the total net income exceeds $75,000 and does not exceed $100,000, 4 per centum per annum upon the amount by which the total net income exceeds $100,000 and does not exceed $250,000, 5 per centum per annum upon the amount by which the total net income exceeds $250,000 and does not exceed $500,000, and 6 per centum per annum upon the amount by which the total net income exceeds $500,000. All the provisions of this section relating to individuals who are chargeable with the normal income tax, so far as they are applicable and are not inconsistent with this subdivision of paragraph A, shall apply to the levy, assessment, and collection of the additional tax imposed under this section. Every person subject to this additional tax shall, for the purpose of its assessment and collection, make a personal return of his total net income from all sources, corporate or otherwise, for the preceding calendar year, under rules and regulations to be prescribed by the Commissioner of Internal Revenue, and approved by the Secretary of the Treasury. For the purpose of this additional tax the taxable income of any individual shall embrace the share to which he would be entitled of the gains and profits, if divided or distributed, whether divided or distributed or not, of all corporations, joint-stock companies, or associations however created or organized, formed or fraudulently availed of for the purpose of preventing the imposition of such tax through the medium of permitting such gains and profits o accumulate instead of being divided or distributed; and the fact that any such corporation, joint-stock company, or association, is a mere holding company, or that the gains and profits are permitted to accumulate beyond the reasonable needs of he business shall be prima facie evidence of a fraudulent purpose to escape such tax; but the fact that the gains and profits are in any case permitted to accumulate and become surplus shall not be construed as evidence of a purpose to escape the said tax in such case unless the Secretary of the Treasury shall certify that in his opinion such accumulation is unreasonable for the purposes of the business. When requested by the Commissioner of Internal Revenue, or any district collector of internal revenue such corporation, joint-stock company, or association shall forward to him a correct statement of such profits and the names of the individuals who would be entitled to the same if distributed.

**Additional tax on net incomes in excess of $20,000—"surtax."**

STOCK DIVIDENDS.

Stock dividends declared in 1914 from profits accrued before January 1, 1913, do not constitute taxable income to recipients under section 2 of the act of October 3, 1913. (Towne *v.* Eisner, 245 U. S. 418, 1918, reversing 242 Fed. 702.)

A dividend declared and paid by one corporation in the stock of another is not a "stock dividend" within the accepted meaning of that term. (Peabody *v.* Eisner, 247 U. S. 347.)

A dividend declared and paid by a going corporation, partly in cash and partly in assets of the corporation, is subject to the additional tax imposed by the act of October 3, 1913, when received by an individual stockholder, although declared from a surplus which was in part accumulated before March 1, 1913. Southern Pacific *v.* Lowe, 247 U. S. 330, distinguished; Lynch *v.* Hornby, 247 U. S. 339 followed. (Peabody *v.* Eisner, 247 U. S. 347.)

CASH DIVIDENDS.

An individual stockholder is subject to the additional tax under the 1913 act on all dividends declared and paid by a corporation in the ordinary course of business after the act became effective, whether from current earnings or from the accumulated surplus made up of past earnings or increase in value of corporate assets notwithstanding the surplus accrued to the corporation in whole or in part prior to March 1, 1913. (Lynch *v.* Turrish, 247 U. S. 221, and Southern Pacific Railway Co. *v.* Lowe, 247 U. S. 330, distinguished; Lynch *v.* Hornby, 247 U. S. 339, 1918.)

The act of September 8, 1916, and the act of October 3, 1917, in excluding dividends declared out of earnings or profits that accrued prior to March 1, 1913, are not intended to be declaratory of the term "dividends" in the 1913 act. (Id.)

DEDUCTION—EXEMPTION UNDER PARAGRAPH C.

The income tax law allows exemption of $3,000 or $4,000, depending on whether the one taxed is single or married, and provides for a tax of 1 per cent on all other income. Other provisions impose a tax of an additional 1 per cent upon the amount by which the total net income exceeds $20,000 and does not exceed $50,000. Held that, in assessing the additional tax on the excess of the net income over $20,000, the exemption of $3,000 or $4,000, which is to be deducted in assessing the normal income tax can not be made. (Cohen *v.* Lowe, 234 Fed. 474, 1916.)

## PARAGRAPH B.

[illegible] there shall be levied, collected, and paid for each year upon the entire net income as hereinafter defined, [illegible] net income shall include gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, business, trade, commerce, or sales or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, also from interest, rent, dividends, securities, or the transaction of any lawful business carried on for gain or profit, or gains or profits and income derived from any source whatever, including the income from but not the value of property acquired by will, devise, bequest, or descent: *Provided*, That the proceeds of life-insurance policies paid upon the death of the person insured or payments made by or credited to the insured on life insurance, endowment, or annuity contracts upon the return thereof to the insured at the maturity of the term mentioned in the contract or upon surrender of contract shall not be included as income.

That in computing net income for the purpose of the normal tax there shall be allowed as deductions: First, the necessary expenses actually paid in carrying on any business, not including personal, living, or family expenses; second, all interest paid within the year by a taxable person on indebtedness; third, all national, State, county, school, and municipal taxes paid within the year, not including those assessed against local benefits; fourth, losses actually sustained during the year, incurred in trade or arising from fires, storms, or shipwreck, and not compensated for by insurance or otherwise; fifth, debts ascertained to be worthless and charged off within the year; sixth, a reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business, not to exceed in the case of mines, 5 per centum of the gross value of the mine of the output for the year for which the computation is made, but no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made: *Provided*, That no deduction shall be allowed for any amounts paid out for new buildings, permanent improvements, or betterments made to increase the value of any property or estate seventh, the amount received as dividends upon the stock or from the net earnings of any corporation, joint-stock company association, or insurance company which is taxable upon its net income as hereinafter provided, eighth, the amount of income, the tax upon which has been paid or withheld for payment at the source of the income, under the provisions of this section, provided that whenever the tax upon the income of a person is required to be withheld and paid at the source as hereinafter required, if such annual income does not exceed the sum of $3,000 or is not fixed or certain, or is intermittent or irregular as to amount or time of accrual, the same shall not be deducted in the personal return of such person.

The net income from property owned and business carried on in the United States by persons residing elsewhere shall be computed upon the basis prescribed in this paragraph and that part of paragraph G of this section relating to the computation of the net income of corporations, joint-stock and insurance companies, organized, created, or existing under the laws of foreign countries, in so far as applicable.

That in computing net income under this section there shall be excluded the interest upon the obligations of a State or any political subdivision thereof, and upon the obligations of the United States, or its possessions; also the compensation of the present President of the United States during the term for which he has been elected, and of the judges of the supreme and inferior courts of the United States now in office, and the compensation of all officers and employees of a State or any political subdivision thereof, except when such compensation is paid by the United States Government.

**Net income.**

LIQUIDATION DIVIDENDS.

Where the capital assets of a corporation increased in value prior to March 1, 1913, and a single and final dividend was made in liquidation of the entire assets in 1914, without further appreciation or addition to the assets having occurred, no part of the dividend received by a stockholder is taxable under the act of October 3, 1913. Citing Collector *v.* Hubbard, 12 Wall. 1, and Bailey *v.* Railroad Co., 22 Wall. 604, and 106 U. S. 109, also Gray *v.* Darlington, 15 Wall. 63. (Lynch *v.* Turrish, 247 U. S. 221, 1918, affirming 236 Fed. 653.)

For income liable to additional tax, see cases under paragraph A (2).

PARTNERSHIP INCOME.

A member of a partnership need not include as a part of his net income subject to normal tax such of his income derived from or through a partnership as has been received by the partnership in the shape of dividends on stocks owned by it in corporations taxable upon their net income. (U. S. *v.* Coulby, 251 Fed. 982, affirmed in 258 Fed. 27.)

STOCK DIVIDENDS.

Stock dividends declared in 1914 from profits accrued before January 1, 1913, do not constitute taxable income to recipients under section 2 of the act of October 3, 1913. (Towne *v.* Eisner, 245 U. S. 418, 1918, reversing 242 Fed. 702. See also Macomber *v.* Eisner, pending in United States Supreme Court.)

SERVICES PERFORMED IN PRIOR YEAR.

Where a life insurance agent holds a contract entitling him to certain specific percentages on first and renewal premium on policies secured through his solicitation when such premium shall be paid; these commissions, when paid on renewal premiums of policies issued before the act became effective but paid after such date, are taxable as "derived income" for the year in which they are received. (Edwards *v.* Keith, 224 Fed. 585, 231 Fed. 110, 243 U. S. 638. Also Woods *v.* Lewellyn, 252 Fed. 106.)

ALIMONY.

Alimony paid monthly to a divorced wife under a decree of court is not taxable as "income" under the income tax act of October 3, 1913. (Gould *v.* Gould, 245 U. S. 151; 168 App. Div. 900 affirmed.)

EXPORT SALES.

The net income from the venture of exportation when completed—that is to say, after the exportation and sale are fully consummated—is subject to taxation under general laws. (Peck & Co. *v.* Lowe, 247 U. S. 165, affirming 234 Fed. 125.)

INCOME DEFINED.

"We must reject in this case, as we have rejected in cases arising under the corporation excise tax act of 1909 (Doyle *v.* Mitchell Bro. Co. and Hays *v.* Gauley Mountain Coal Co., decided May 20, 1918 the broad contention submitted in behalf of the Government that all receipts—everything that comes in—are income within the proper definition of the term "gross income," and that the entire proceeds of a conversion of capital assets, in whatever form and under whatever circumstances accomplished, should be treated as gross income. Certainly the term "income" has no broader meaning in the 1913 act than in that of 1909 (see Stratton's Independence *v.* Howbert, 231 U. S. 399), and for the present purpose we assume there is no difference in its meaning as used in the two acts." (So. Pac. Co. *v.* Lowe, 247 U. S. 330, 1918.)

**Net income—Deductions.**

SUBDIVISION 3.—TAXES.

New York State transfer taxes held not deductible, as taxes paid under this paragraph, as "* * * the tax can not properly be regarded as an imposition upon either the property or the right to receive a gross amount of the property of a decedent represented by a legacy, devise, or distributive share, but that the property and the right to receive it passed, reduced by the amount of the tax, measured by a percentage of the value of the gross share." (Opinion by Judge Hand in the case of Prentiss *v.* Eisner, U. S. D. C., So. Dist. of New York, Sept., 1919. T. D. 2933.)

SUBDIVISION 4.—LOSSES.

Loss of the value of corporate stock, acquired by numerous transfers of property to the corporation and payment of corporate debts, transactions carried on for a considerable period, complicated in character and involving large sums of money, so that they must have required much time and attention, is a loss incurred in trade, which can be deducted from gross income under this section. (Bryce *v.* Keith, 257 Fed. 133, 1919.)

**PARAGRAPH C.**

C. That there shall be deducted from the amount of the net income of each of said persons, ascertained as provided herein, the sum of $3,000 plus $1,000 additional if the person making the return be a married man with a wife living with him, or plus the sum of $1,000 additional if the person making the return be a married woman with a husband living with her; but in no event shall this additional exemption of $1,000 be deducted by both a husband and a wife: *Provided*, That only one deduction of $4,000 shall be made from the aggregate income of both husband and wife when living together.

**Additional tax—Exemption under.**

The income tax law allows exemption of $3,000 or $4,000, depending on whether the one taxed is single or married, and provides for a tax of 1 per cent on all other income. Other provisions impose a tax of an additional 1 per cent upon the amount by which the total net income exceeds $20,000 and does not exceed $50,000. *Held*, That, in assessing the additional tax on the excess of the net income over $20,000, the exemption of $3,000 or $4,000, which is to be deducted in assessing the normal income tax can not be made. (Cohen *v.* Lowe, 234 Fed. 474, 1916.)

**PARAGRAPH D.**

D. The said tax shall be computed upon the remainder of said net income of each person subject thereto, accruing during each preceding calendar year ending December thirty-first: *Provided, however*, That for the year ending December thirty-first, nineteen hundred and thirteen, said tax shall be computed on the net income accruing from March first to December thirty-first, nineteen hundred and thirteen, both dates inclusive, after deducting five-sixths only of the specific exemptions and deductions herein provided for. On or before the first day of March, nineteen hundred and fourteen, and the first day of March in each year thereafter, a true and accurate return, under oath or affirmation, shall be made by each person of lawful age, except as hereinafter provided, subject to the tax imposed by this section, and having a net income of $3,000 or over for the taxable year, to the collector of internal revenue for the district in which such person resides or has his principal place of business, or, in the case of a person residing in a foreign country, in the place where his principal business is carried on within the United States, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, setting forth specifically the gross amount of income from all separate sources and from the total thereof, deducting the aggregate items or expenses and allowance herein authorized; guardians, trustees, executors, administrators, agents, receivers, conservators, and all persons, corporations, or associations acting in any fiduciary capacity, shall make and render a return of the net income of the person for whom they act, subject to this tax, coming into their custody or control and management, and be subject to all the provisions of this section which apply to individuals: *Provided*, That a return made by one of two or more joint guardians, trustees, executors, administrators, agents, receivers, and conservators, or other persons acting in a fiduciary capacity, filed in the district where such person resides, or in the district where the will or other instrument under which he acts is recorded, under such regulations as the Secretary of the Treasury may prescribe, shall be a sufficient compliance with the requirements of this paragraph; and also all persons, firms, companies, copartnerships, corporations, joint-stock companies or associations, and insurance companies, except as hereinafter provided, in whatever capacity acting, having the control, receipt, disposal, or payment of fixed or determinable annual or periodical gains, profits, and income of another person subject to tax, shall in behalf of such person deduct and withhold from the payment an amount equivalent to the normal income tax upon the same and make and render a return, as aforesaid, but separate and distinct, of the portion of the income of each person from which the normal tax has been thus withheld, and containing also the name and address of such person or stating that the name and address or the address, as the case may be, are unknown: *Provided*, That the provision requiring the normal tax of individuals to be withheld at the source of the income shall not be construed to require any of such tax to be withheld prior to the first day of November, nineteen hundred and thirteen: *Provided further*, That in either case above mentioned

no return of income not exceeding $3,000 shall be required: *Provided further*, That any persons carrying on business in partnership shall be liable for income tax only in their individual capacity, and the share of the profits of a partnership to which any taxable partner would be entitled if the same were divided, whether divided or otherwise, shall be returned for taxation and the tax paid, under the provisions of this section, and any such firm, when requested by the Commissioner of Internal Revenue, or any district collecter, shall forward to him a correct statement of such profits and the names of the individuals who would be entitled to the same, if distributed: *Provided further*, That persons liable for the normal income tax only, on their own account or in behalf of another, shall not be required to make return of the income derived from dividends on the capital stock or from the net earnings of corporations, joint-stock companies or associations, and insurance companies taxable upon their net income as hereinafter provided. Any person for whom return has been made and the tax paid, or to be paid as aforesaid, shall not be required to make a return unless such person has other net income, but only one deduction of $3,000 shall be made in the case of any such person. The collector or deputy collector shall require every list to be verified by the oath or affirmation of the party rendering it. If the collector or deputy collector have reason to believe that the amount of any income returned is understated, he shall give due notice to the person making the return to show cause why the amount of the return should not be increased, and upon proof of the amount understated may increase the same accordingly. If dissatisfied with the decision of the collector, such person may submit the case, with all the papers, to the Commissioner of Internal Revenue for his decision, and may furnish sworn testimony of witnesses to prove any relevant facts.

**Returns.**

PARTNERSHIPS.

"* * * Section D requires copartnerships, having the control, receipt, disposal, or payment of fixed income of another person subject to tax, to make a return in behalf of that person and to deduct the same. This provision deals with the fiduciary relationship of guardians, trustees, executors, etc., having the possession and control of other person's property, but, as regards an ordinary partnership and its ordinary business, the statement is true that no return is required to be made under the Federal income-tax law of 1913 by partnership." (U. S. *v.* Coulby, 251 Fed. 982, 984, affirmed in 258 Fed. 27, 1919.)

DIVIDENDS RECEIVED FROM CORPORATIONS LIABLE TO TAX.

The provision of the act of September 8, 1916, is to be regarded only as a legislative recognition of the scope and intent of the prior law in regard to allowing members of partnership credit for their proportionate share of partnership gains and profits derived from corporations taxable on their net income, and not as a change in the law. (U. S. *v.* Coulby, 251 Fed. 982, affirmed in 258 Fed. 27, 1919.)

WITHHOLDING.

The provisions for collecting income at the source do not deny due process of law by reason of duties imposed upon corporations without compensation in connection with the payment of the tax by others. (Brushaber *v.* Union Pacific Ry. Co., 240 U. S. 1, 1916.)

## PARAGRAPH E.

E. That all assessments shall be made by the Commissioner of Internal Revenue and all persons shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assessments shall be paid on or before the thirtieth day of June, except in cases of refusal or neglect to make such return and in cases of false or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as provided for in this section or by existing law, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such person or persons immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the thirtieth day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of 5 per centum on the amount of tax unpaid, and interest at the rate of 1 per centum per month upon said tax from the time the same became due, except from the estates of insane, deceased, or insolvent persons.

All persons, firms, copartnerships, companies, corporations, joint-stock companies or associations, and insurance companies, in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees, acting in any trust capacity, executors, administrators, agents, receivers, conservators, employers, and all officers and employees of the United States having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual gains, profits, and income of another person, exceeding $3,000 for any taxable year, other than dividends on capital stock, or from the net earnings of corporations and joint-stock companies or associations subject to like tax, who are required to make and render a return in behalf of another, as provided herein, to the collector of his, her, or its district, are hereby authorized and required to deduct and withhold from such annual gains, profits, and income such sum as will be sufficient to pay the normal tax imposed thereon by this section, and shall pay to the officer of the United States Government authorized to receive the same; and they are each hereby made personally liable for such tax. In all cases where the income tax of a person is withheld and deducted and paid or to be paid at the source, as aforesaid, such person shall not receive the benefit of the deduction and exemption allowed in paragraph C of this section except by an application for refund of the tax unless he shall, not less than thirty days prior to the day on which the return of his income is due, file with the person who is required to withhold and pay tax for him, a signed notice in writing claiming the benefit of such exemption and thereupon no tax shall be withheld upon the amount of such exemption: *Provided*, That if any person for the purpose of obtaining any allowance or reduction by virtue of a claim for such exemption, either for himself or for any other person, knowingly makes any false statement or false or fraudulent representation, he shall be liable to a penalty of $300; nor shall any person under the foregoing conditions be allowed the benefit of any deduction provided for in subsection B of this section unless he shall, not less than thirty days prior to the day on which the return of his income is due, either file with the person who is required to withhold and pay tax for him a true and correct return of his annual gains, profits, and income from all other sources, and also the deductions asked for, and the showing thus made shall then become a part of the return to be made in his behalf by the person required to withhold and pay the tax, or likewise make application for deductions to the collector of the district in which return is made or to be made for him: *Provided further*, That if such person is a minor or an insane person,

or is absent from the United States, or is unable owing to serious illness to make the return and application above provided for, the return and application may be made for him or her by the person required to withhold and pay the tax, he making oath under the penalties of this act that he has sufficient knowledge of the affairs and property of his beneficiary to enable him to make a full and complete return for him or her, and that the return and application made by him are full and complete: *Provided further*, That the amount of the normal tax hereinbefore imposed shall be deducted and withheld from fixed and determinable annual gains, profits, and income derived from interest upon bonds and mortgages, or deeds of trust or other similar obligations of corporations, joint-stock companies or associations, and insurance companies, whether payable annually or at shorter or longer periods, although such interest does not amount to $3,000, subject to the provisions of this section requiring the tax to be withheld at the source and deducted from annual income and paid to the Government; and likewise the amount of such tax shall be deducted and withheld from coupons, checks, or bills of exchange for or in payment of interest upon bonds of foreign countries and upon foreign mortgages or like obligations (not payable in the United States), and also from coupons, checks, or bills of exchange for or in payment of any dividends upon the stock or interest upon the obligations of foreign corporations, associations, and insurance companies engaged in business in foreign countries; and the tax in each case shall be withheld and deducted for and in behalf of any person subject to the tax hereinbefore imposed, although such interest, dividends, or other compensation does not exceed $3,000, by any banker or person who shall sell or otherwise realize coupons, checks, or bills of exchange drawn or made in payment of any such interest or dividends (not payable in the United States), and any person who shall obtain payment (not in the United States), in behalf of another of such dividends and interest by means of coupons, checks, or bills of exchange, and also any dealer in such coupons who shall purchase the same for any such dividends or interest (not payable in the United States), otherwise than from a banker or another dealer in such coupons; but in each case the benefit of the exemption and the deduction allowable under this section may be had by complying with the foregoing provisions of this paragraph.

All persons, firms, or corporations undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange shall obtain a license from the Commissioner of Internal Revenue, and shall be subject to such regulations enabling the Government to ascertain and verify the due withholding and payment of the income tax required to be withheld and paid as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; and any person who shall knowingly undertake to collect such payments as aforesaid without having obtained a license therefor, or without complying with such regulations, shall be deemed guilty of a misdemeanor and for each offense be fined in a sum not exceeding $5,000, or imprisoned for a term not exceeding one year, or both, in the discretion of the court.

Nothing in this section shall be construed to release a taxable person from liability for income tax, nor shall any contract entered into after this Act takes effect be valid in regard to any Federal income tax imposed upon a person liable to such payment.

The tax herein imposed upon annual gains, profits, and income not falling under the foregoing and not returned and paid by virtue of the foregoing shall be assessed by personal return under rules and regulations to be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury.

The provisions of this section relating to the deduction and payment of the tax at the source of income shall only apply to the normal tax hereinbefore imposed upon individuals.

## Assessments, Withholding, Etc.

TIME.

Assessment of tax for 1913, in May 1915, was in time if the taxpayer's return was "false," which evidently does not mean "fraudulent," but merely untrue or incorrect. (Woods *v.* Lewellyn, 252 Fed. 106, 1918.)

WITHHOLDING.

The provisions for collecting income at the source do not deny due process of law by reason of duties imposed upon corporations without compensation in connection with the payment of the tax by others. (Brushaber *v.* Union Pacific Ry. Co. 240 U. S. 1, 1916, followed in Dodge *v.* Osborn, 240 U. S. 118, 1916.)

### PARAGRAPH G (a).

G. (a) That the normal tax hereinbefore imposed upon individuals likewise shall be levied, assessed, and paid annually upon the entire net income arising or accruing from all sources during the preceding calendar year to every corporation, joint-stock company or association, and every insurance company, organized in the United States, no matter how created or organized, not including partnerships; but if organized, authorized, or existing under the laws of any foreign country, then upon the amount of net income accruing from business transacted and capital invested within the United States during such year: *Provided, however*, That nothing in this section shall apply to labor, agricultural, or horticultural organizations, or to mutual savings banks not having a capital stock represented by shares, or to fraternal beneficiary societies, orders, or associations operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders, or associations and dependents of such members, nor to domestic building and loan associations, nor to cemetery companies, organized and operated exclusively for the mutual benefit of their members, nor to any corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual, nor to business leagues, nor to chambers of commerce or boards of trade, not organized for profit or no part of the net income of which inures to the benefit of the private stockholder or individual; nor to any civic league or organization not organized for profit, but operated exclusively for the promotion of social welfare: *Provided further*, That there shall not be taxed under this section any income derived from any public utility or from the exercise of any essential governmental function accruing to any State, Territory, or the District of Columbia, or any political subdivision of a State, Territory, or the District of Columbia, nor any income accruing to the government of the Philippine Islands or Porto Rico, or of any political subdivision of the Philippine Islands or Porto Rico: *Provided*, That whenever any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, has, prior to the passage of this act, entered in good faith into a contract with any person or corporation, the object and purpose of which is to acquire, construct, operate, or maintain a public utility, no tax shall be levied under the provisions of this act upon the income derived from the operation of such public utility, so far as the payment thereof will impose a loss or burden upon such State, Territory, or the District of Columbia, or a political subdivision of a State or Territory; but this provision is not intended to confer upon such person or corporation any financial gain or exemption

or to relieve such person or corporation from the payment of a tax as provided for in this section upon the part or portion of the said income to which such person or corporation shall be entitled under such contract.

## Tax on Corporations.

### FOREIGN CORPORATIONS.

Where a Canadian corporation, making newspaper paper, sent agents into the United States to solicit purchasers for its product, paying their expenses, hiring desk room in the United States, empowering the salesmen to make written contracts, in part in the United States, subject to the corporation's approval in Canada, and, when approved, to deliver the contracts, paying rent, storage charges on paper shipped into the United States, and also for work done by checks drawn on a bank in the United States where the company kept its funds received for goods delivered in the United States to purchasers, and then, to perform its written contracts, shipped paper consigned to itself in the United States to different points, where it hired storage rooms, and had the paper delivered to itself at such rooms, where it stored it in its own name and at its own risk pending delivery, doing so for its own convenience and to insure delivery according to contract, also shipping into the United States and storing in such manner paper to meet anticipated demands, such Canadian company "did business" in the United States, "and engaged in business" therein, and also "transacted business" in the United States, so that it was liable to taxation under both acts. (Laurentide Co. Limited, *v.* Durey, 231 Fed. 223, 1916.)

### LEASED CORPORATIONS.

A corporation is liable under section 2, G (a), imposing taxes on corporate income arising or accruing from all sources even though it was not engaged in business and derived all its income as rent from its property. (239 Fed. 739, Rensselaer & S. R. Co. *v.* Irwin, Aff. in 249 Fed. 726, 1918.)

A railroad company, although not engaged in business, but which has leased all of its property for a long term or for the life of its franchise, the rental to be paid by the lessee as interest on its bonds and a fixed dividend on its stock, direct to the bondholders and stockholders is subject to tax on such rental under this act, the mode of payment provided in the lease being merely for a convenience in distributing the rental. (Northern R. R. Co. of New Jersey *v.* Lowe, 250 Fed. 856, following Rensselaer & S. R. Co. *v.* Irwin, 249 Fed. 726.)

A lessor street railway corporation is subject to tax on payments made by lessee to stockholders of the lessor under a contract provision in the lease. (West End St. Ry. Co. *v.* Malley, 246 Fed. 625, 1917.)

RECEIVERS.

Receivers of insolvent corporations were not taxable prior to the act of September 8, 1916.. (Scott *v.* Western Pacific R. R. Co., 246 Fed. 545.)

Receivers are not subject to tax under the 1913 act on net earnings of an insolvent railroad operated by them. (Equitable Trust Co. of N. Y. *v.* Western Pac. Ry. Co., 236 Fed. 813, 1916, following Penn. Steel Co. *v.* N. Y. C. Ry. Co., 198 Fed. 775; decided under 1909 act.)

JOINT-STOCK ASSOCIATIONS.

Where trustees hold shares of stock of a corporation and real estate subject to lease, collecting the dividends and rents, but otherwise doing no business, and distribute the income less taxes and similar expenses to the holders of their receipt certificates, who have no control except the right of filling a vacancy among the trustees and of consenting to a modification of the terms of the trust, upon the special fact under the act of October 3, 1913, the trust is not subject to the income tax as a joint-stock association, and the trustees and the cestui que trust are to be treated as fiduciaries and beneficiaries for purposes of taxation. (Crocker *v.* Malley, 249 U. S. 223, reversing 250 Fed. 817, 1919.) This case distinguished in Malley *v.* Bowditch (259 Fed. 809, 1919.)

See case of Haiku Sugar Co. *v.* Johnstone, 249 Fed. 103, 1918. Under Partnerships (case 2) this section.

PARTNERSHIPS.

"Partnerships are expressly excluded from section G, * * *. If Congress had intended that partnerships, as such, should be taxable upon their net income, the logical place to have so provided would have been in section G, and to have excluded from the net income of a natural taxable person, subject to the normal tax, that part of his income derived from a partnership, just as is provided with respect to his income derived from a corporation. * * * The Congress consequently, it would seem, ignored, for taxing purposes, a partnership's existence, and placed the individual partner's share in its gains and profits on the same footing as if his income had been received directly by him without the intervention of a partnership name." (U. S. *v.* Coulby, 251 Fed. 982, affirmed in 258 Fed. 27, 1919.)

Under Session Laws, Hawaii, 1903, act 51, section 1, permitting any two or more corporations organized under the laws of Hawaii to enter into partnership with each other for the transaction of any lawful business, several corporations, by an agreement dated October 30, 1903, formed a partnership, the by-laws of which provided for management by representatives selected by the several partners, who were to represent the partners according to their respective interests. There were no special partners, and there was no partner-

ship capital stock. *Held*, That as the partnership was lawful under the laws of Hawaii, it could not be treated as a joint-stock company and so subject to taxation under this act. (Haiku Sugar Co. et al. *v.* Johnstone, 249 Fed. 103, 1918.)

The changeability of membership or transferability of shares is often used as a determining criterion between ordinary partnerships and joint-stock companies. In a joint-stock company, the members have no right to decide what new members shall be admitted; on the other hand, the right of delectus personarum is an inherent quality of an ordinary partnership.

A joint-stock company usually consists of a large number of persons between whom there is no special relation of confidence and the retirement or death of a member works no dissolution, while a partnership, though it may consist of several, is ordinarily made up of members who are drawn to each other by feelings of mutual confidence and no member is at liberty to retire and substitute another. In a joint-stock company a shareholder has no power to contract for the company, whereas a partner may bind a partnership though the partnership is composed of corporations. (Haiku Sugar Co. *v.* Johnstone, 249 Fed. 103, 1918.)

"ACCRUING" OF INCOME.

An annual dividend received by a corporation on the stock of another corporation is subject to the tax imposed by this section for the calendar year in which it was declared and paid, as income "accruing" during such year, although half of the profits out of which the dividend was paid accrued prior to the passage of the act. (Skinner *v.* Union Pacific Coal Co., 249 Fed. 152, 1918; petition for certiorari granted, 247 U. S. 511, pending in the U. S. Supreme Court.)

MINING CORPORATIONS.

The tax on the product of a mine is not a tax upon property as such because of its ownership, but a true excise levied on the results of the business of carrying on mining operations. (Stanton *v.* Baltic Mining Co., 240 U. S. 103, 1916.)

HOLDING COMPANIES.

A corporation, which merely held the stock of other corporations and, by issuance of proxies to vote at the meetings of the subsidiary companies, directed such corporations, is not exercising any franchise on which excise taxes may be assessed, under income-tax act 1913, for the months of January and February of that year, prior to the ratification of the income-tax amendment to the Constitution of the United States; this being so, though the holding corporation made a loan to its subsidiary company. (Butterick Co. *v.* United States and Federal Pub. Co. *v.* Same, 240 Fed. 539, 1917; dismissed on motion of U. S., 248 U. S., 587.)

EXCISE TAX FOR JANUARY AND FEBRUARY, 1913.

The proviso in section 4–S was intended to relate only to rights and liabilities in respect to taxes which had accrued under the act of 1909, and was not intended to cover excise taxes upon corporations for the months of January and February, 1913, which were imposed by the income-tax act, as the constitutional amendment of March 1, 1913, designed to permit taxation of income without apportionment was not adopted until March 1, this being apparent from the provision that the excise tax for these two months shall be ascertained in accordance with the provisions of section G. Consequently, exemptions in the corporation excise tax act are not applicable to taxes imposed for these two months. (Butterick Co. *v.* United States, and Federal Pub. Co. *v.* Same, 240 Fed. 539, 1917; dismissed on motion of U. S., 248 U. S., 587.)

**PARAGRAPH G (b).**

(b) Such net income shall be ascertained by deducting from the gross amount of the income of such corporation, joint-stock company or association, or insurance company, received within the year from all sources, (first) all the ordinary and necessary expenses paid within the year in the maintenance and operation of its business and properties, including rentals or other payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation by use, wear, and tear of property, if any; and in the case of mines a reasonable allowance for depletion of ores and all other natural deposits, not to exceed 5 per centum of the gross value at the mine of the output for the year for which the computation is made; and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: *Provided*, That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: *Provided further*, That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year; (third) the amount of interest accrued and paid within the year on its indebtedness to an amount of such indebtedness not exceeding one-half of the sum of its interest bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of its indebtedness not exceeding the amount of capital employed in the business at the close of the year: *Provided*, That in case of indebtedness wholly secured by collateral the subject of sale in ordinary business of such corporation, joint-stock company, or association, the total interest secured and paid by such company, corporation, or association within the year on any such indebtedness may be deducted as a part of

its expense of doing business: *Provided further*, That in the case of bonds or other indebtedness, which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed shall be allowed; and in the case of a bank, banking association, loan, or trust company, interest paid within the year on deposits or on moneys received for investment and secured by interest-bearing certificates of indebtedness issued by such bank, banking association, loan or trust company; (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof, or imposed by the Government of any foreign country: *Provided*, That in the case of a corporation, joint-stock company or association, or insurance company, organized, authorized, or existing under the laws of any foreign country, such net income shall be ascertained by deducting from the gross amount of its income accrued within the year from business transacted and capital invested within the United States, (first) all the ordinary and necessary expenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States, including rentals or other payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year in business conducted by it within the United States and not compensated by insurance or otherwise, including a reasonable allowance for depreciation by use, wear and tear of property, if any, and in the case of mines a reasonable allowance for depletion of ores and all other natural deposits, not to exceed 5 per centum of the gross value at the mine of the output for the year for which the computation is made; and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: *Provided further*, That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: *Provided further*, That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year; (third) the amount of interest accrued and paid within the year on its indebtedness to an amount of such indebtedness not exceeding the proportion of one-half of the sum of its interest-bearing capital indebtedness and its paid-up stock outstanding at the close of the year, or if no capital stock, the capital employed in the business at the close of the year which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States: *Provided*, That in the case of bonds or other indebtedness which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed shall be allowed; (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof or the District of Columbia. In the case of assessment insurance companies whether domestic or foreign, the actual deposit of sums with State or Territorial officers, pursuant to law, as additions to guarantee or reserve funds shall be treated as being payments required by law to reserve funds.

**Income of corporations.**

DIVIDENDS FROM SUBSIDIARIES.

Case 1. Where a holding company owns all the stock of its subsidiary corporation except the qualifying shares of the directors, and the subsidiary corporation, together with the holding company, constitute a single enterprise, the accumulated earnings and surplus of the subsidiary corporations used by them as capital prior to January 1, 1913, do not become taxable income of the holding company when formally transferred to it as dividends.

Though the holding company did not itself do the business of its subsidiaries and have possession of their property, as in Southern Pacific *v.* Lowe (247 U. S. 330), the principle of that case governs. (Gulf Oil Corp'n *v.* Lewellyn, 248 U. S. 71, reversing 245 Fed. 1.)

Case 2. Where a corporation is the owner of all the stock in a subsidiary company and the lessee of all its property, regularly maintaining possession, control, and management of all of the subsidiaries money and other property, so that the subsidiary is a mere agent of the other corporation and is practically merged therewith, dividends of the subsidiary declared out of a surplus which accrued prior to March 3, 1913, are not taxable income of the parent corporation. (Collector *v.* Hubbard, 12 Wall, 1; Pullman Car Co. *v.* Missouri Pac. Co., 115, U. S., 587; Peterson *v.* Chicago, Rock Island & Pac. Ry. 206 U. S. 364, distinguished; Southern Pacific Railway Co. *v.* Lowe, 247 U. S. 330, 1918.)

FOREIGN CORPORATIONS.

Case 3. Income from activities carried on in United States. See case 1 under paragraph G (a).

INSOLVENT CORPORATIONS.

Case 4. No income tax could be assessed on income collected by a receiver of an insolvent corporation prior to the act of September 8, 1916. (Scott *v.* Western Pacific R. R. Co., 246 Fed. 545.)

RENTALS FROM LESSEE.

Case 5. Prior to the passage of the act, plaintiff railroad company had leased its line to a second company, which agreed to pay the interest upon bonds issued by plaintiff and to pay direct to each stockholder dividends at the rate of 8 per cent per annum. Under the agreement, plaintiff received $1,000 yearly from the lessee to enable it to maintain its corporate organization. *Held*, in view of the fact that the agreement provided that lessee should not pay any income tax which might thereafter be imposed on the dividends and interest, and that, if required by law to pay the same, it might

deduct the amount from such interest and dividends, the dividends paid direct to the stockholders as rent must be treated as corporate "income" subject to taxation, for the provision for payment directly by the lessee was a mere labor-saving device. (Rensselaer & S. R. Co. *v.* Irwin, 239 Fed. 739, Aff. in 249 Fed. 726, 1918.) Similar income held taxable in the case of Northern Railroad Co., of New Jersey *v.* Lowe (250 Fed. 856).

Case 6. Where a street railway company demised its lines and property to another company, under an agreement that the lessee should on stipulated dates in each year pay to the persons holding shares of stock, and certified by the lessor as entitled to dividends, stipulated sums per share, the total amount so paid by the lessee was income of the lessor street railway corporation and was subject to tax under income-tax act October 3, 1913 (c. 16, 38 Stat. 166, 172), for the lease was made by the corporation only, and the stockholders had no interest in the demised property entitling them to rent, but they received their payments merely by virtue of their holding of the stock, and the lessor company could, by suit in its own name, without joining the stockholders, recover the agreed payments if withheld. (West End St. Ry. Co. *v.* Malley, 246 Fed. 625, 1917.)

INCOME DEFINED.

Case 7. We must reject in this case, as we have rejected in cases arising under the corporation excise-tax act of 1909 (Doyle *v.* Mitchell Bros. Co., and Hays *v.* Gauley Mountain Coal Co., decided May 20, 1918), the broad contention submitted in behalf of the Government that all receipts—everything that comes in—are income within the proper definition of the term "gross income," and that the entire proceeds of a conversion of capital assets, in whatever form and under whatever circumstances accomplished, should be treated as gross income. Certainly the term "income" has no broader meaning in the 1913 act than in that of 1909 (see Stratton's Independence *v.* Howbert, 231 U. S. 399, 416, 417), and for the present purpose we assume there is no difference in its meaning as used in the two acts. This being so, we are bound to consider accumulations that accrued to a corporation prior to January 1, 1913, as being capital, not income, for the purposes of the act. (So. Pacific *v.* Lowe, 247 U. S. 330, 1918, following Lynch *v.* Hornby, 247 U. S. 339, reversing 238 Fed. 847.)

"ACCRUED" INCOME.

Case 8. An annual dividend received by a corporation on the stock of another corporation is subject to the tax imposed by this section, for the calendar year in which it was declared and paid, as income "accruing" during such year, although half of the profits out of

which the dividend was paid accrued prior to the passage of the act. (Skinner *v.* Union Pacific Coal Co., 249 Fed. 152, 1918; petition for certiorari granted, 247 U. S. 511, pending in the U. S. Supreme Court.)

Case 9. The taxes levied upon "net income received" was intended to include only the receipt of actual cash and did not include contemplated revenue due and unpaid, and the term "net income accrued" did not include that which did not exist except on paper. (Maryland Casualty Co. *v.* United States, 52 Ct. Cls. 201, 1917; see also 52 Ct. Cls. 288.) This case now pending in the United States Supreme Court, 1919.

RELEASED RESERVE FUNDS.

Case 10. The sums released from reserve funds are not exempt from taxation as reserve funds, for when they cease to be reserve funds they are then income and subject to taxation as "income from all sources." (Maryland Casualty Co. *v.* U. S. 52 Ct. Cls. 201, 1917; see also 52 Ct. Cls. 288.) This case now pending in United States Supreme Court, 1919.

INCOME OF AGENTS.

Case 11. An insurance company is obligated to report in full the total sums received in cash, both amounts received at the home office and those paid to its lawful agencies during the calendar year. (Maryland Casualty Co. *v.* U. S. 52 Ct. Cls. 201, 1917; see also 52 Ct. Cls. 288.) This case now pending in United States Supreme Court, 1919.

DIVIDENDS PAID TO POLICYHOLDERS BY LIFE INSURANCE COMPANIES.

Case 12. The proviso in this section treats policyholders individually and separately, and not in mass, and a company may not exclude from its income a dividend paid to a policyholder, even though for redundancies in premiums previously paid, unless it has received premiums from him during the tax year and then only to the extent of the amount of premiums so received from him, either actually or theoretically. (Lederer *v.* Penn Mutual Life Ins. Co., 258 Fed. 81, 1919, reversing 247 Fed. 599.)

Case 13. So-called dividends paid to policyholders by a mutual level premium life insurance company, consisting of excess premiums collected, are covered by the noninclusion clause of section 2 G (b), and may not be deducted from gross income in ascertaining net income under the deduction clause, as sums paid on "policy * * * contracts." (Id.)

**Deductions.**

Case 14. The fact that different deductions are allowed in the case of individuals and that of corporations, and that mining corporations are allowed different deductions from other corporations, does not render the act invalid. (Knowlton *v.* Moore, 178 U. S. 41; Flint *v.* Stone Tracy Co., 220 U. S. 107; Billings *v.* U. S., 232 U. S. 608; National Bank *v.* Commonwealth, 9 Wall. 353; National Safe Deposit Co. *v.* Illinois, 232 U. S. 58; Brushaber *v.* Union Pacific Ry. Co., 240 U. S. 1, followed in Stanton *v.* Baltic Mining Co., 240 U. S. 103, 1916.)

DEPRECIATION.

Case 15. In computing for assessment of income taxes the amount of depreciation of property held for rental purposes, the depreciation to be allowed is for the wear and tear suffered by the building during the tax year, assuming that it is kept in good repair, and no allowance can be made for change in neighborhood or diminished rental value because of the erection of more modern buildings. (Cohen *v.* Lowe, 234 Fed. 474, 1916.)

NET ADDITION TO RESERVE FUNDS—INSURANCE COMPANIES.

Case 16. Only the net additions to reserve funds required by State statutes is deductible from gross income. No State law has been pointed out which requires the maintenance of reserve funds to secure payments of taxes, salaries, and brokerage and agents' commissions. (Maryland Casualty Co. *v.* U. S., 52 Ct. Cls. 201, 1917; see also 52 Ct. Cls. 288, pending in U. S. Sup. Ct. 1919.)

"SUMS OTHER THAN DIVIDENDS" PAID ON INSURANCE POLICIES.

Case 17. Under life insurance policies providing for payment to the beneficiaries in installments on death of insured, and for interest on deferred installments, interest so paid is not a dividend, but a "sum other than dividends paid * * * on policy * * * contracts," and deductible by the company from gross income under this section. (Lederer *v.* Penn. Mut. Life Ins. Co., 258 Fed. 81, 1919, reversing 247 Fed. 559.)

Case 18. Interest on redundancies of premium for previous years paid by a policyholder in a life insurance company and allowed to remain with the company under the contract when paid to the policyholder constitutes a "dividend" within the meaning of this section providing for a deduction from gross income of "sums other than dividends paid within the year on policy * * * contracts," and may not be deducted thereunder. (Id.)

See also cases 12 and 13 under paragraph G (b).

## PARAGRAPH G (c).

(c) The tax herein imposed shall be computed upon its entire net income accrued within each preceding calendar year ending December thirty-first: *Provided, however*, That for the year ending December thirty-first, nineteen hundred and thirteen, said tax shall be imposed upon its entire net income accrued within that portion of said year from March first to December thirty-first, both dates inclusive, to be ascertained by taking five-sixths of its entire net income for said calendar year: *Provided further*, That any corporation, joint-stock company or association, or insurance company subject to this tax may designate the last day of any month in the year as the day of the closing of its fiscal year and shall be entitled to have the tax payable by it computed upon the basis of the net income ascertained as herein provided for the year ending on the day so designated in the year preceding the date of assessment instead of upon the basis of the net income for the calendar year preceding the date of assessment; and it shall give notice of the day it has thus designated as the closing of its fiscal year to the collector of the district in which its principal business office is located at any time not less than thirty days prior to the date upon which its annual return shall be filed. All corporations, joint-stock companies or associations, and insurance companies subject to the tax herein imposed, computing taxes upon the income of the calendar year, shall, on or before the first day of March, nineteen hundred and fourteen, and the first day of March in each year thereafter, and all corporations, joint-stock companies or associations, and insurance companies, computing taxes upon the income of a fiscal year which it may designate in the manner hereinbefore provided, shall render a like return within sixty days after the close of its said fiscal year, and within sixty days after the close of its fiscal year in each year thereafter, or in the case of a corporation, joint-stock company or association, or insurance company, organized or existing under the laws of a foreign country, in the place where its principal business is located within the United States, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, shall render a true and accurate return under oath or affirmation of its president, vice president, or other principal officer, and its treasurer or assistant treasurer, to the collector of internal revenue for the district in which it has its principal place of business, setting forth (*first*) the total amount of its paid-up capital stock outstanding, or if no capital stock, its capital employed in business, at the close of the year; (*second*) the total amount of its bonded and other indebtedness at the close of the year; (*third*) the gross amount of its income, received during such year from all sources, and if organized under the laws of a foreign country the gross amount of its income received within the year from business transacted and capital invested within the United States; (*fourth*) the total amount of all its ordinary and necessary expenses paid out of earnings in the maintenance and operation of the business and properties of such corporation, joint-stock company or association, or insurance company within the year, stating separately all rentals or other payments required to be made as a condition to the continued use or possession of property, and if organized under the laws of a foreign country the amount so paid in the maintenance and operation of its business within the United States; (*fifth*) the total amount of all losses actually sustained during the year and not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: *Provided further*, That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the

payment of losses and expenses and reinsurance reserves: *Provided further*, That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year; and in case of a corporation, joint-stock company or association, or insurance company, organized under the laws of a foreign country, all losses actually sustained by it during the year in business conducted by it within the United States, not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: *Provided further*, That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: *Provided further*, That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year; (*sixth*) the amount of interest accrued and paid within the year on its bonded or other indebtedness not exceeding one-half of the sum of its interest bearing indebtedness and its paid-up capital stock, outstanding at the close of the year, or if no capital tock, the amount of interest paid within the year on an amount of indebtedness not exceeding the amount of capital employed in the business at the close of the year, and in the case of a bank, banking association, or trust company, stating separately all interest paid by it within the year on deposits; or in case of a corporation, joint-stock company or association, or insurance company, organized under the laws of a foreign country, interest so paid on its bonded or other indebtedness to an amount of such bonded or other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of capital employed in the business at the close of the year, which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States; (*seventh*) the amount paid by it within the year for taxes imposed under the authority of the United States and separately the amount so paid by it for taxes imposed by the Government of any foreign country; (*eighth*) the net income of such corporation, joint-stock company or association, or insurance company, after making the deductions in this subsection authorized. All such returns shall as received be transmitted forthwith by the collector to the Commissioner of Internal Revenue.

All assessments shall be made and the several corporations, joint-stock companies or associations, and insurance companies shall be notified of the amount for which

they are respectively liable on or before the first day of June of each successive year, and said assessment shall be paid on or before the thirtieth day of June: *Provided*, That every corporation, joint-stock company or association, and insurance company, computing taxes upon the income of the fiscal year which it may designate in the manner hereinbefore provided, shall pay the taxes due under its assessment within one hundred and twenty days after the date upon which it is required to file its list or return of income for assessment; except in cases of refusal or neglect to make such return, and in cases of false or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as provided for in this section or by existing law, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such corporation, joint-stock company or association, or insurance company immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the thirtieth day of June in any year, or after one hundred and twenty days from the date on which the return of income is required to be made by the taxpayer, and after ten days notice and demand thereof by the collector, there shall be added the sum of 5 per centum on the amount of tax unpaid and interest at the rate of 1 per centum per month upon said tax from the time the same becomes due.

**Corporation returns.**

RECEIVERS.

Receivers of insolvent corporations, duly appointed by the court, are not required to make returns of the net earnings resulting from their operation of such dissolved corporations. (Scott *v.* Western Pacific R. R. Co., 246 Fed. 545, 1917, and Equitable Tr. Co. of New York *v.* Western Pac. Ry. Co., 236 Fed. 816, 1916.) Following Penn. Steel Co. *v.* N. Y. C. Ry. Co., 198 Fed. 775, decided under 1909 act.

COMPUTATION OF TAX.

It is the evident purpose of the act to refrain from taxing income that accrued prior to March 1, 1913, and to exclude from consideration in making computation of taxable income for a given year any income that accrued in the preceding taxable year. (Southern Pacific *v.* Lowe, 247 U. S. 330, 1918. Reversing 238 Fed. 847.)

FISCAL YEAR.

The fiscal year for a firm of which plaintiff was a member began before the income-tax law went into effect. There was no showing that during that part of the year before the law went into effect any profits were earned. *Held*, That, without such showing, plaintiff could not object that income taxes were assessed on the entire profits earned, on the ground that part of the taxes were based on income earned before the law went into effect. (Cohen *v.* Lowe, 234 Fed. 474, 1916.)

**PARAGRAPH L.**

L. That all administrative, special, and general provisions of law, including the laws in relation to the assessment, remission, collection, and refund of internal-revenue

taxes not heretofore specifically repealed and not inconsistent with the provisions of this section, are hereby extended and made applicable to all the provisions of this section and to the tax herein imposed.

**Assessment, remission, collection, and refunding of taxes.**

RECOVERY, INTEREST.

Where a collector of internal revenue, acting under income-tax law, October 3, 1913, illegally collected taxes from a partnership composed of corporations, the members of the firm are entitled to recover the exaction, with interest and costs. (Haiku Sugar Co. et al. *v.* Johnstone, 249 Fed. 103, 1918.)

RESTRAINING INJUNCTIONS.

Despite section 3224, Revised Statutes, which declares that no suit for the purpose of restraining the assessment or collection of any tax shall be maintained, receivers, as officers of the court, may, where they deem the property or income from the property in their charge not to be subject to tax, as contended by collecting officials, apply to the appointing court for instructions as to payment. (Scott *v.* Western Pac. Railway Co., 246 Fed. 545, 1917.)

There is no jurisdiction to entertain a suit brought to restrain collection of a tax. (Dodge *v.* Brady, 240 U. S. 122, 1916.)

The provisions of section 3224, Revised Statutes, forbid a suit to restrain the assessment or collection of internal-revenue taxes and a suit to enjoin the assessment or collection of a tax because of alleged unconstitutionality of the statute not allowable. (Dodge *v.* Osborn, 240 U. S. 118, 1916.)

A United States district court has jurisdiction of an action by a stockholder against a corporation to enjoin it from voluntarily paying the tax under the income-tax law of 1913, on the ground of its unconstitutionality where the proper averments have been made. (Brushaber *v.* Union Pacific Ry. Co., 240 U. S. 1, followed in Stanton *v.* Baltic Mining Co., 240 U. S. 103, 1916.)

The United States Supreme Court, under section 238, Judicial Code, has jurisdiction of a direct appeal from the judgment of the district court refusing to enjoin a corporation from paying tax under the 1913 act in a suit brought by a stockholder on the ground of unconstitutionality of the statute. (Stanton *v.* Baltic Mining Co., 240 U. S. 103, 1916.)

RECOVERY OF TAXES—BURDEN OF PROOF.

To recover income taxes paid under protest, on the ground that an insufficient amount was allowed for depreciation of the income-producing property, plaintiff has the burden of showing that the amount allowed was too small. (Cohen *v.* Lowe, 234 Fed. 474, 1916.

PARAGRAPH S.

*Section 4 (paragraph S)* of the act of October 3, 1913, further provides * * * That a special excise tax with respect to the carrying on or doing of business, equivalent to 1 per centum upon their entire net income, shall be levied, assessed, and collected upon corporations, joint stock companies or associations, and insurance companies of the character described in section thirty-eight of the act of August fifth, nineteen hundred and nine, for the period from January first to February twenty-eighth, nineteen hundred and thirteen, both dates inclusive, which said tax shall be computed upon one-sixth of the entire net income of said corporations, joint-stock companies or associations, and insurance companies, for said year, said net income to be ascertained in accordance with the provisions of subsection G of section two of this act: *Provided further*, That the provisions of said section thirty-eight of the act of August fifth, nineteen hundred and nine, relative to the collection of the tax therein imposed shall remain in force for the collection of the excise tax herein provided, but for the year nineteen hundred and thirteen it shall not be necessary to make more than one return and assessment for all the taxes imposed herein upon said corporations, joint-stock companies or associations, and insurance companies, either by way of income or excise, which return and assessment shall be made at the times and in the manner provided in this act. * * *

**Repealing provisions—Tax for January and February, 1913.**

Corporation excise-tax act August 5, 1909, which embraced no tax upon dividends received by corporations from stock of other corporations, subject to the tax, was repealed by income-tax act October 3, 1913, section 4 S, which contained a proviso that the repeal of existing laws or modifications thereof embraced in the act should not affect any act done or right accruing, or any suit or proceeding had or commenced in any civil case before such repeal or modification, but all rights and liabilities under such laws should continue and might be enforced in the same manner as if such repeal or modification had not been made. *Held*, that such saving clause was intended to relate only to rights and liabilities in respect to taxes which had accrued under the act of 1909, and was not intended to cover excise taxes from corporations for the months of January and February, 1913, which were imposed by the income-tax act, as the constitutional amendment of March 1, 1913, designed to permit taxation of incomes without apportionment was not adopted until March 1; this being apparent from the provisions in that act that excise taxes for two months shall be ascertained in accordance with the provisions of section 2 (g). Consequently exemptions in the corporation excise-tax act are not applicable to taxes imposed for those two months. (Butterick Co. *v.* United States and Federal Pub. Co. *v.* Same, 240 Fed. 539, 1917.)

# OPIUM ACTS.

## ACT OF JANUARY 17, 1914.

AN ACT Regulating the manufacture of smoking opium within the United States, and for other purposes.

*Be it enacted, etc.*, That an internal-revenue tax of $300 per pound shall be levied and collected upon all opium manufactured in the United States for smoking purposes; and no person shall engage in such manufacture who is not a citizen of the United States and who has not given the bond required by the Commissioner of Internal Revenue. Every person who prepares opium suitable for smoking purposes from crude gum opium, or from any preparation thereof, or from the residue of smoked or partially smoked opium, commonly known as yen shee, or from any mixture of the above, or any of them, shall be regarded as a manufacturer of smoking opium within the meaning of this act.

SEC. 2. That every manufacturer of such opium shall file with the collector of internal revenue of the district in which his manufactory is located such notices, inventories, and bonds, shall keep such books and render such returns of material and products, shall put up such signs and affix such number to his factory, and conduct his business under such surveillance of officers and agents as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation require. But the bond required of such manufacturer shall be with sureties satisfactory to the collector of internal revenue, and in a penal sum of not less than $100,000 and the sum of said bond may be increased from time to time and additional sureties required, at the discretion of the collector or under instructions of the Commissioner of Internal Revenue.

SEC. 3. That all opium prepared for smoking manufactured in the United States shall be duly stamped in such a permanent manner as to denote the payment of the internal-revenue tax thereon.

SEC. 4. That the provisions of existing laws covering the engraving, issue, sale, accountability, effacement, cancellation, and the destruction of stamps relating to tobacco and snuff, as far as applicable, are hereby made to apply to stamps provided for by the preceding section.

SEC. 5. That a penalty of not less than $10,000 or imprisonment for not less than five years, or both, in the discretion of the court, shall be imposed for each and every violation of the preceding sections of this act relating to opium by any person or persons; and all opium prepared for smoking wherever found within the United States without the stamps required by this act shall be forfeited and destroyed.

SEC. 6. The provisions of the act of October first, eighteen hundred and ninety (Twenth-sixth Statutes, page fifteen hundred and sixty-seven), in so far as they relate to the manufacture of smoking opium, are hereby repealed.

Approved, January 17, 1914. (38 Stat. 275.)

### Constitutionality of the act.

Section 1 of the act imposing an internal-revenue tax on smoking opium made in the United States, and prohibiting its manufacture except by citizens who have given bond, held constitutional. (Lee Mow Lin *v.* United States, 250 F. 694.)

**Expert evidence.**

In a prosecution for illegally manufacturing smoking opium, the testimony of an expert chemist and analyst that in his opinion the opium in question, which he had analyzed, was of domestic manufacture and made from crude gum, based on the difference in the morphine content between such opium and the foreign-made article, *held* properly admitted. (Lee Mow Lin *v.* United States, 250 Fed. 694, 1918.)

**Indictment of aliens.**

Where an indictment charged that defendants did "engage in the business of manufacturers of opium for smoking purposes, without having given the bond required by law of manufacturers of opium for smoking purposes" and in the trial the fact appeared that each of the defendants was not a citizen of the United States but was a Chinese person; as there was no proof that defendants had failed to give the bond required by the commissioner and as he could not have required a bond of the defendants, the statute restricting the right of manufacture to United States citizens, there was a failure to prove an essential element of the indictment and therefore they could not be convicted. (Lee Mow Lin et al. *v.* United States, 240 Fed. 408, 1917; Aff. 250 Fed. 694, 1918.)

**Failure to give bond.**

The Government, on prosecution for manufacture of opium for smoking purposes without the giving of the bond required by law, viz, "the bond required by the Commissioner of Internal Revenue," must show that said Commissioner had, by regulation, required a bond, and what it called for. (Chin Sing *v.* United States, 227 Fed. 396, 1915.)

**Noncompliance with regulations.**

The Government, on prosecution for manufacturing opium for smoking purposes without doing certain things, as required by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, by regulations made by said commissioner under authority of law, must show the making of the regulations and what they were. (Id.)

**Failure to stamp.**

The Government, on prosecution for manufacturing opium for smoking purposes without stamping it in such a permanent manner as to denote payment of the internal-revenue tax thereon, must show existence of a stamp therefor, required by regulations of the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury. (Id.)

# SPECIAL TAXES AND STAMP TAXES.

## ACT OF OCTOBER 22, 1914.

### GENERAL PROVISIONS.

**Acts of 1862 and 1898 considered.**

The provisions of the acts of July 1, 1862, and June 13, 1898, are considered in construing stamp taxes under the act of October 22, 1914. (In re Hawley, 220 Fed. 373, 1915.)

**Construction.**

The rule that the internal-revenue law should be strictly construed in favor of exemption is but a rule of construction, which yields when the intent of the statute is manifest. (In re Hawley, 220 Fed. 373, 1915.)

**Constitutionality.**

The statute is not void, as imposing (sec. 3) a direct tax upon the property of a banker merely because of his ownership of such property as the act does not tax property as such but levies a special license tax upon one engaged in a particular business, because of the privilege he is exercising, and the fact, if true, that the amount paid is the same as would be paid had all the property of the banker been taxed on an assessed value basis, is merely incidental and accidental. (Real Estate Title, Ins. & Trust. Co., *v.* Lederer, 229 Fed. 799, 1916.)

The tax imposed by section 3 (1) of this act upon bankers for capital used in the banking business is a franchise tax, and is not subject to attack on the ground that it is a direct tax not apportioned. (Anderson *v.* Farmers' Loan & Trust Co., 241 Fed. 323, 1917.)

### SECTION 3—OCCUPATIONAL TAXES.

#### SPECIAL TAXES.

SEC. 3. That on and after November first, nineteen hundred and fourteen, special taxes shall be, and hereby are, imposed annually as follows, that is to say:

First. Bankers shall pay $1 for each $1,000 of capital used or employed, and in estimating capital surplus and undivided profits shall be included. The amount of such annual tax shall in all cases be computed on the basis of the capital, surplus, and undivided profits for the preceding fiscal year. Every person, firm, or company, and every incorporated or other bank, having a place of business where credits are opened by the deposit or collection of money or currency, subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stocks, bonds, bullion, bills of exchange, or promissory notes, or where stocks, bonds, bullion, bills of exchange, or promissory notes are received for discount or sale, shall be a banker under this act: *Provided*, That any postal savings bank, or savings bank having

no capital stock, and whose business is confined to receiving deposits and loaning or investing the same for the benefit of its depositors, and which does no other business of banking, shall not be subject to this tax.

Second. Brokers shall pay $30. Every person, firm, or company, whose business it is to negotiate purchases or sales of stocks, bonds, exchange, bullion, coined money, bank notes, promissory notes, or other securities, for themselves or others, shall be regarded as a broker: *Provided*, That any person having paid the special tax as a banker shall not be required to pay the special tax as a broker.

Third. Pawnbrokers shall pay $50. Every person, firm, or company whose business or occupation it is to take or receive, by way of pledge, pawn, or exchange, any goods, wares, or merchandise, or any kind of personal property whatever, as security for the repayment of money loaned thereon, shall be deemed a pawnbroker.

Fourth. Commercial brokers shall pay $20. Every person, firm, or company whose business it is as a broker to negotiate sales or purchases of goods, wares, produce, or merchandise, or to negotiate freights and other business for the owners of vessels, or for the shippers or consignors or consignees of freight carried by vessels, shall be regarded as a commercial broker under this act.

Fifth. Custom-house brokers shall pay $10. Every person, firm, or company whose occupation it is, as the agent of others, to arrange entries and other custom-house papers, or transact business at any port of entry relating to the importation or exportation of goods, wares, or merchandise, shall be regarded as a custom-house broker.

Sixth. Proprietors of theaters, museums, and concert halls, where a charge for admission is made, having a seating capacity of not more than two hundred and fifty, shall pay $25; having a seating capacity of more than two hundred and fifty and not exceeding five hundred, shall pay $50; having a seating capacity exceeding five hundred and not exceeding eight hundred, shall pay $75; having a seating capacity of more than eight hundred, shall pay $100. Every edifice used for the purpose of dramatic or operatic or other representations, plays, or performances, for admission to which entrance money is received, not including halls or armories rented or used occasionally for concerts or theatrical representations, shall be regarded as a theater: *Provided*, That whenever any such edifice is under lease at the passage of this act, the tax shall be paid by the lessee, unless otherwise stipulated between the parties to said lease.

Seventh. The proprietor or proprietors of circuses shall pay $100. Every building, space, tent, or area where feats of horsemanship or acrobatic sports or theatrical performances not otherwise provided for in this act are exhibited shall be regarded as a circus: *Provided*, That no special tax paid in one State, Territory, or the District of Columbia shall exempt exhibitions from the tax in another State, Territory, or the District of Columbia, and but one special tax shall be imposed for exhibitions within any one State, Territory, or District.

Eighth. Proprietors or agents of all other public exhibitions or shows for money not enumerated in this section shall pay $10: *Provided*, That a special tax paid in one State, Territory, or the District of Columbia, shall not exempt exhibitions from the tax in another State, Territory, or the District of Columbia, and but one special tax shall be required for exhibitions within any one State, Territory, or the District of Columbia: *Provided further*, That this paragraph shall not apply to Chautauquas, lecture lyceums, agricultural or industrial fairs, or exhibitions held under the auspices of religious or charitable associations.

Ninth. Proprietors of bowling alleys and billard rooms shall pay $5 for each alley or table. Every building or place where bowls are thrown or where games of billards or pool are played and that are open to the public, with or without price, shall be regarded as a bowling alley or a billiard room, respectively.

Tenth. Commission merchants shall pay $20. Every person, firm, or company whose business or occupation it is to receive into his or its possession any goods, wares,

or merchandise to sell the same on commission shall be regarded as a commission merchant: *Provided*, That any person having paid the special tax as a commercial broker shall not be required to pay the special tax as a commission merchant: *Provided further*, That this provision shall not apply to commission houses run upon a cooperative plan.

**Section 3 (1)—Special tax on bankers.**

What, if any, of the capital of a corporation engaged in banking and other kinds of business, is employed in banking, within act October 22, 1914, is a fact to be found. (Real Estate Title, Ins. & Trust Co. *v.* Lederer, 229 Fed. 799, 1916.) See also this case under "Constitutionality."

A corporation, engaged not only in the banking business, but also in the title, insurance, and other kinds of business kept entirely separate from its other moneys a sum equal to its aggregate of deposits, and a sum equal to the aggregate of its capital and surplus invested on chosen securities, called "capital investments." Its capital investments were invested in real estate and other investments of a less mobile character than investments commonly termed "liquid," while the deposits were invested in securities which were more readily convertible into cash, and these investments were kept separate from its other investments. It from time to time put out statements of its financial condition, showing its assets to consist of cash on hand, etc., and showing the aggregate amount of its liabilities, in which were included, to balance the statement, the amount of its capital stock, surplus, and undivided profits, which were not less than the amount which measured the tax imposed on it under the act of October 22, 1914, and paid by it. *Held*, That the fact did not show that it did not use or employ any part of its capital in banking and it was not entitled to recover back such tax, as the character of a banker's investments can have no bearing upon the question of the amount of capital invested in the business, and the capital, surplus, or undivided profits, either separately or in a lump, can not be segregated from a bank's other assets and identified as such. (Real Estate Title, Ins. & Trust Co. *v.* Lederer, 229 Fed. 799, 1916.)

A trust company, chartered to do a banking as well as a trust company business, which was authorized to discount commercial paper and accept drafts, and which held investments to an amount exceeding its capital, surplus, and undivided profits, opened a so-called capital investment account, to which bonds and mortgages were debited to an amount exceeding the capital, surplus, and undivided profits. The trust company, while doing a trust company business, also did a considerable banking business. *Held*, That when a trust company is organized, obtains subscription for capital stock, and then opens its doors and begins business, its assets comprise all its property, and it is liable for taxation upon that portion of its capital and surplus actually employed in the banking business, regardless of its artificial

methods of designating the employment of such property. (Anderson *v.* Farmers' Loan & Trust Co., 241 Fed. 322, 1917.)

Deposits are not the property of the depositors, but of the bank receiving them; the relation of a bank and its depositor being that of a debtor and creditor, so that deposits and investments are equally assets of the bank. (Id.)

The collector of internal revenue, having been informed by the officers of a trust company that it was engaged in a banking business, may, without requiring a further return, when the one made by officers failed to disclose the amount of the company's capital and surplus used in the banking business, proceed in accordance with Revised Statutes, section 3176, to assess the tax imposed on such property by this act. (Id.)

Though a return did not furnish a basis for the assessment, the collector's assessment against a trust company engaged in the banking business under this act is prima facie valid.

For a trust company doing a banking business, assessed under this act to recover the amount of an asessment on the ground that it was imposed on funds not used in the banking business, the trust company has the burden of showing that the tax was not in fact due. Proof of irregularity in the method of assessment is not sufficient. (Anderson *v.* Farmers' Loan & Trust Co., 241 Fed. 322, 1917.)

A bank which, in addition to its banking business, acts as trustee, receiver, executor, or administrator, or engages in underwriting or promoting new enterprises, or refinancing old enterprises, or buys and sells securities on its own account for profit, is subject to the tax imposed by the first paragraph of section 3 of the act of October 22, 1914, upon the total amount of its capital, including surplus and undivided profits, unless it be shown that a specific portion of its capital is used in such other business and that such use does not constitute banking. (Fidelity Tr. Co., of Baltimore, Md., *v.* Miles, Collector; and Baltimore Tr. Co. *v.* Miles. Decided in U. S. D. C. Dist. of Maryland, 258 Fed. 770, 1919.)

That a bank deals on its own account in stocks and bonds or other securities does not exempt the capital employed therein from the special tax imposed by section 3 (1). (Id.)

That a corporation engaged mainly in the business of examining and insuring real estate titles also carried on a savings bank business, which it keeps separate from its other business, such other business not affecting it, except as giving it credit and facilitating the getting of customers for its bank, does not make the total amount of capital, surplus, and undivided profits used in the insurance business subject to the special tax imposed by act of Congress October 22, 1914, section 3, paragraph 1; the amount used in the banking business as such only being subject thereto. (Title Guarantee & Trust Co. *v.* Miles, 258 Fed. 771.)

**Section 3 (8)—Proprietors or agents of all other public exhibitions or shows for money not enumerated in this section.**

A corporation using the term "Lyceum Bureau" in its title, engaged in the business of supplying Chautauqua and lyceum courses throughout the country with lecturers and entertainers, is subject to tax on professional show features, for they do not fall within the exception in the act. (Redpath Lyceum Bureau *v.* Pickering, 251 Fed. 49, 1918.) Petition for writ of certiorari denied in United States Supreme Court, 246 U. S. 677.

The expression "lecture lyceum" as used in the provision of this section excepting the same from tax liability does not include independent show units engaged for certain occasions by lecture bureaus. (Id.)

## SECTIONS 5 AND 6—ADHESIVE STAMPS.

TAX ON INSTRUMENTS.

SEC. 5. That on and after the first day of December, nineteen hundred and fourteen, there shall be levied, collected, and paid, for and in respect of the several bonds, debentures, or certificates of stock and of indebtedness, and other documents, instruments, matters, and things mentioned and described in Schedule A of this act, or for or in respect of the vellum, parchment, or paper upon which such instruments, matters, or things, or any of them, shall be written or printed by any person or persons, or party who shall make, sign, or issue the same, or for whose use or benefit the same shall be made, signed, or issued, the several taxes or sums of money set down in figures against the same, respectively, or otherwise specified or set forth in the said schedule.

TAXES UNDER SCHEDULE B.

And there shall also be levied, collected, and paid, for and in respect to the preparations, matters, and things mentioned and described in Schedule B of this act, manufactured, sold, or removed for sale, the several taxes or sums of money set down in words or figures against the same, respectively, or otherwise specified or set forth in Schedule B of this act.

PENALTY.

SEC. 6. That if any person or persons shall make, sign, or issue, or cause to be made, signed, or issued, any instrument, document, or paper of any kind or description whatsoever, without the same being duly stamped for denoting the tax hereby imposed thereon, or without having thereupon an adhesive stamp to denote said tax, such person or persons shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not more than $100, at the discretion of the court.

## SECTION 5—STAMP TAXES.

(See cases under section 22, Schedule A, for tax on specific instruments; Schedule B for proprietary stamp tax.)

Under section 5, imposing a stamp tax, and section 6, imposing a penalty, and section 11, in regard to registering, issuing, or transferring any instrument without the tax, the stamp need not be attached to the paper before the paper is signed or partially executed if it is subsequently affixed before the paper is issued, as the

word "or" is disjunctive as to persons but conjunctive as to a complete act of making, signing, and using. (Home Title Ins. Co. of New York *v.* Keith, 230 Fed. 905, 1916.)

The grantee of land named in a referee's deed executed as part of an action for the foreclosure of a mortgage is a person causing the deed to be issued, and for whose use and benefit it is issued within sections 5 and 6 of the act so as to impose on it the duty of seeing that the stamps thereby required to be affixed are affixed. (Home Title Ins. Co. of New York *v.* Keith, 230 Fed. 905, 1916.)

(U. S. C. C. A. Mass.) Within war tax law (Oct. 22, 1914, sec. 5, Schedule A), imposing a stamp tax of 5 cents on each $100 of face value, or fraction thereof, of certificates of stock issued by any association, company, or corporation, such tax must be paid on certificates of shares issued by a manufacturing company organized in the form of a trust under the common law, and deriving none of its rights, benefits, or qualifications from any statute, and which was not an ordinary common-law real estate trust; for, if the word "association" be not broad enough to include the concern, it is included in the expression "company," while the phrase "certificates of stock" discloses no intent to exclude common-law associations or companies, but evidences a legislative purpose to impose a stamp tax on certificates of stock as muniments of title. (Malley *v.* Bowditch, 259 Fed. 809, 1919.)

War tax law (Oct. 22, 1914, sec. 5, Schedule A), imposing a stamp tax of 5 cents on each $100 of face value, or fraction thereof, of certificates of stock, issued by any company, association, or corporation, is not invalid in its application to a manufacturing company organized as a trust at common law, on the theory that it was inapplicable to other associations, for the taxes were merely on the muniments of title, and if other associations do not issue such muniments of title they are therefore not taxable. (Malley *v.* Bowditch, 259 Fed. 809, 1919.)

State agencies.

Section 5 as applied to a deed executed by a referee appointed in an action to foreclose a mortgage is not invalid as imposing a tax upon the State's exercise of its governmental functions, as the tax imposed is an excise tax on the business transaction involved in the purchase of the land and its transfer to the purchaser, and the transfer is in its nature the same as any transfer from one individual to another. (Home Title Ins. Co. of New York *v.* Keith, 230 Fed. 905, 1916.)

While this section does not apply to a warrant of attorney authorizing an attorney at law to appear in an action on behalf of the maker, it does apply to powers of attorney generally, distin-

guished from warrants of attorney, in that they authorize laymen to act as attorneys in fact; and hence a general letter of attorney, authorizing the appointee to act for the signer in bankruptcy proceedings must be stamped.

The imposition of a stamp tax on certificates of any description required by law, not otherwise specified in the act does not render a certificate which is required to enable some officer of the court to exercise his functions, or to do some act connected with the administration of the Government liable to tax, but certificates required of such officers by private persons are liable to such tax; and hence a referee in bankruptcy properly refused to certify an order approving the bond of the trustee, unless an internal-revenue stamp was attached thereto. (In re Hawley, 220 Fed. 372, 1915.)

The tax under section 5 on a deed executed by a referee appointed in an action to foreclose a mortgage is not a tax on the State's exercise of its governmental functions, as the tax is on the business transaction involved in the purchase of the land and its transfer to the purchaser, and the transfer is in its nature the same as any transfer from one individual to another. (Home Title Ins. Co. of New York *v.* Keith, 230 Fed. 905, 1916.)

Revenue stamps of the proper amount must be attached to a deed executed by a master in chancery or other court officer empowered by a Federal court to make a sale of land and execute a conveyance, as a master appointed for such purpose performs no judicial function, and the tax is not imposed on a proceeding by the court but on the litigants. (Crawford *v.* New South Farm & Home Co., 231 Fed. 999, 1915.)

**Cost of stamps.**

The cost of internal-revenue stamps attached to a deed executed by a master in chancery empowered to make a sale of land and execute a conveyance will be taxed as a part of the costs of the case. (Crawford *v.* New South Farm & Home Co., 231 Fed. 999, 1915.)

### SECTION 6—PENALTIES.

See cases 1 and 2 under section 5, and cases 1 to 4 under section 23.

### SECTION 11—REGISTERING, ISSUING, ETC.

PERSONS REGISTERING, ISSUING, ETC., ANY INSTRUMENTS, DOCUMENTS, ETC., WITHOUT STAMP—PENALTY—VALIDATING INSTRUMENTS.

SEC. 11. That any person or persons who shall register, issue, sell or transfer, or who shall cause to be issued, registered, sold, or transferred, any instrument, document, or paper of any kind or description whatsoever mentioned in Schedule A of this act, without the same being duly stamped, or having thereupon an adhesive stamp for denoting the tax chargeable thereon, and canceled in the manner required by law, with intent to evade the provisions of this act, shall be deemed guilty of a

misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding $50, or by imprisonment not exceeding six months, or both, in the discretion of the court: *Provided*, That hereafter, in all cases where the party has not affixed to any instrument the stamp required by law thereon at the time of issuing, selling, or transferring the said bonds, debentures, or certificates of stock or of indebtedness, and he or they, or any party having an interest therein, shall be subsequently desirous of affixing such stamp to said instrument, or, if said instrument be lost, to a copy thereof, he or they shall appear before the collector of internal revenue of the proper district, who shall, upon the payment of the price of the proper stamp required by law, and of a penalty of $10, and, where the whole amount of the tax denoted by the stamp required shall exceed the sum of $50, on payment also of interest at the rate of six per centum on said tax from the day on which such stamp ought to have been affixed, affix the proper stamp to such bond, debenture, certificate of stock or of indebtedness or copy, and note upon the margin thereof the date of his so doing, and the fact that such penalty has been paid; and the same shall thereupon be deemed and held to be as valid, to all intents and purposes, as if stamped when made or issued: *And provided further*, That where it shall appear to said collector, upon oath or otherwise, to his satisfaction, that any such instrument has not been duly stamped, at the time of making or issuing the same, by reason of accident, mistake, inadvertence, or urgent necessity, and without any willful design to defraud the United States of the stamp, or to evade or delay the payment thereof, then and in such case, if such instrument, or, if the original be lost, a copy thereof, duly certified by the officer having charge of any records in which such original is required to be recorded, or otherwise duly proven to the satisfaction of the collector, shall, within twelve calendar months after the making or issuing thereof, be brought to the said collector of internal revenue to be stamped, and the stamp tax chargeable thereon shall be paid, it shall be lawful for the said collector to remit the penalty aforesaid and to cause such instrument to be duly stamped. And when the original instrument, or a certified or duly proven copy thereof, as aforesaid, duly stamped so as to entitle the same to be recorded, shall be presented to the clerk, register, recorder, or other officer having charge of the original record, it shall be lawful for such officer, upon the payment of the fee legally chargeable for the recording thereof, to make a new record thereof, or to note upon the original record the fact that the error or omission in the stamping of said original instrument has been corrected pursuant to law; and the original instrument or such certified copy, or the record thereof, may be used in all courts and places in the same manner and with like effect as if the instrument had been originally stamped: *And provided further*, That in all cases where the party has not affixed the stamp required by law upon any such instrument issued, registered, sold, or transferred at a time when and at a place where no collection district was established, it shall be lawful for him or them, or any party having an interest therein to affix the proper stamp thereto, or, if the original be lost, to a copy thereof. But no right acquired in good faith before the stamping of such instrument, or copy thereof, as herein provided, if such record be required by law, shall in any manner be affected by such stamping as aforesaid.

**Documents, etc., without stamp.**

(See case 1 under section 5 of this act.)

SECTION 22—SCHEDULE A.—STAMP TAXES.

Bonds, debentures, or certificates of indebtedness issued on and after the first day of December, nineteen hundred and fourteen, by any association, company, or corporation, on each $100 of face value or fraction thereof, 5 cents, and on each original issue, whether on organization or reorganization, of certificates of stock by any such association, company, or corporation, on each $100 of face value or fraction thereof, 5 cents, and on all sales, or agreements to sell, or memoranda of sales or deliveries or

transfers of shares or certificates of stock in any association, company, or corporation, whether made upon or shown by the books of the association, company, or corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock, or to secure the future payment of money or for the future transfer of any stock, on each $100 of face value or fraction thereof, 2 cents: *Provided*, That it is not intended by this act to impose a tax upon an agreement evidencing a deposit of stock certificates as collateral security for money loaned thereon, which stock certificates are not actually sold, nor upon such stock certificates so deposited: *Provided further*, That in case of sale where the evidence of transfer is shown only by the books of the company the stamp shall be placed upon such books; and where the change of ownership is by transfer certificate the stamp shall be placed upon the certificate; and in cases of an agreement to sell or where the transfer is by delivery of the certificate assigned in blank there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers. And any person or persons liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person or persons, who shall make any such sale, or who shall in pursuance of any such sale deliver any such stock, or evidence of the sale of any such stock or bill or memorandum thereof, as herein required, without having the proper stamps affixed thereto, with intent to evade the foregoing provisions shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not exceeding $1,000, or be imprisoned not more than six months, or both, at the discretion of the court.

Upon each sale, agreement of sale, or agreement to sell, any products or merchandise at any exchange, or board of trade, or other similar place, either for present or future delivery, for each $100 in value of said sale or agreement of sale or agreement to sell, 1 cent, and for each additional $100 or fractional part thereof in excess of $100, 1 cent: *Provided*, That on every sale or agreement of sale or agreement to sell as aforesaid there shall be made and delivered by the seller to the buyer a bill, memorandum, agreement, or other evidence of such sale, agreement of sale, or agreement to sell, to which there shall be affixed a lawful stamp or stamps in value equal to the amount of the tax on such sale. And every such bill, memorandum, or other evidence of sale or agreement to sell shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers; and any person or persons liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person or persons, who shall make any such sale or agreement of sale, or agreement to sell, or who shall, in pursuance of any such sale, agreement of sale, or agreement to sell, deliver any such products or merchandise without a bill, memorandum, or other evidence thereof as herein required, or who shall deliver such bill, memorandum, or other evidence of sale, or agreement to sell, without having the proper stamps affixed thereto, with intent to evade the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not exceeding $1,000, or be imprisoned not more than six months, or both, at the discretion of the court.

That no bill, memorandum, agreement, or other evidence of such sale, or agreement of sale, or agreement to sell, in case of products or merchandise actually delivered at the time of sale or while in vessel, boat, or car, and actually in course of transportation, shall be subject to this tax, provided such bill, memorandum, agreement, or other evidence of such sale, or agreement of sale, or agreement to sell shall be accompanied by bills of lading or vouchers showing that the said products are actually in course of transportation as aforesaid.

Promissory notes, except bank notes issued for circulation, and for each renewal of the same, for a sum not exceeding $100, 2 cents; and for each additional $100 or fractional part thereof in excess of $100, 2 cents.

Express and freight: It shall be the duty of every railroad or steamboat company, carrier, express company, or corporation or person whose occupation is to act as such, to issue to the shipper or consignor, or his agent, or person from whom any goods are accepted for transportation, where a charge exceeding 5 cents is made, a bill of lading, manifest, or other evidence of receipt and forwarding for each shipment received for carriage and transportation whether in bulk or in boxes, bales, packages, bundles, or not so inclosed or included; and such shipper, consignor, agent, or person shall duly attach and cancel, as is in this act provided, to each of said bills of lading, manifests, or other memorandum, a stamp of the value of 1 cent: *Provided*, That a consignment of newspapers to any one point or to different points by the same train or conveyance when inclosed in one general bundle at the point of shipment shall be considered as one shipment, and, in lieu of a bill of lading therefor, the publisher of such newspaper shall file on or before the fifteenth day of each month with the collector of internal revenue for the district in which such newspaper is published a report under oath showing the number of such shipments during the preceding month, to which report such publisher shall affix and cancel stamps equal in value to 1 cent for each shipment so reported: *Provided further*, That the report herein required shall not include shipments of newspapers delivered to points within the county in which the same are published. Any failure to issue such bill of lading, manifest, or other memorandum, as herein provided, shall subject such railroad or steamboat company, carrier, express company, or corporation or person to a penalty of $50 for each offense.

Telegraph and telephone messages: It shall be the duty of every person, firm, or corporation owning or operating any telegraph or telephone line or lines to make within thirty days after the expiration of each month a sworn statement to the collector of internal revenue in each of their respective districts, stating the number of dispatches, messages, or conversations originated at each of their respective exchanges, toll stations, or offices, and transmitted thence over their lines during the preceding month for which a charge of 15 cents or more was imposed, and for each of such messages or conversations the said person, firm, or corporation shall collect from the person paying for the message or conversation a tax of 1 cent in addition to the regular charges for the message or conversation, which tax the said person, firm, or corporation shall in turn pay to the said collector of internal revenue of their respective districts: *Provided*, That only one payment of said tax shall be required, notwithstanding the lines of one or more persons, firms, or corporations shall be used for the transmission of each of said messages or conversations: *Provided further*, That the messages or dispatches of the officers and employees of any telegraph or telephone company concerning the affairs and service of the company, and like messages or dispatches of the officials and employees of railroad companies sent over the wires on their respective railroads shall be exempt from this requirement: *And provided further*, That messages of officers and employees of the Government on official business shall be exempt from the taxes herein imposed upon telegraphic and telephonic messages.

Bond: For indemnifying any person or persons, firm, or corporation who shall have become bound or engaged as surety for the payment of any sum of money, or for the due execution or performance of the duties of any office or position, and to account for money received by virtue thereof, and all other bonds of any description, except such as may be required in legal proceedings, not otherwise provided for in this schedule, 50 cents.

Certificate of profits, or any certificate or memorandum showing an interest in the property or accumulations of any association, company, or corporation, and on all transfers thereof, on each $100 of face value or fraction thereof, 2 cents.

Certificate: Any certificate of damage, or otherwise, and all other certificates or documents issued by any port warden, marine surveyor, or other person, acting as such, 25 cents.

Certificate of any description required by law not otherwise specified in this act, 10 cents.

Contract: Broker's note, or memorandum of sale of any goods or merchandise, stocks, bonds, exchange, notes of hand, real estate, or property of any kind or description issued by brokers or persons acting as such, for each note or memorandum of sale, not otherwise provided for in this act, 10 cents.

Conveyance: Deed, instrument, or writing, whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his, her, or their direction, when the consideration or value of the interest or property conveyed, exclusive of the value of any lien or encumbrance thereon, exceeds $100 and does not exceed $500, 50 cents; and for each additional $500 or fractional part thereof in excess of $500, 50 cents: *Provided*, That nothing contained in this paragraph shall be so construed as to impose a tax upon any instrument or writing given to secure a debt.

Entry of any goods, wares, or merchandise at any customhouse, either for consumption or warehousing, not exceeding $100 in value, 25 cents; exceeding $100 and not exceeding $500 in value, 50 cents; exceeding $500 in value, $1.

Entry for the withdrawal of any goods or merchandise from customs bonded warehouse, 50 cents.

Insurance: Each policy of insurance or other instrument, by whatever name the same shall be called, by which insurance shall be made or renewed upon property of any description (including rents or profits), whether against peril by sea or on inland waters, or by fire or lightning, or other peril, made by any person, association, or corporation, upon the amount of premium charged, one-half of 1 cent on each dollar or fractional part thereof: *Provided*, That purely cooperative or mutual fire insurance companies or associations carried on by the members thereof solely for the protection of their own property and not for profit shall be exempted from the tax herein provided: *And provided further*, That policies of reinsurance shall be exempt from the tax herein imposed by this paragraph.

Each policy of insurance, or bond, or obligation of the nature of indemnity for loss, damage, or liability issued, or executed, or renewed by any person, association, company, or corporation, transacting the business of fidelity, employer's liability, plate glass, steam boiler, burglary, elevator, automatic sprinkler, or other branch of insurance (except life, personal accident, and health insurance, and insurance described and taxed or exempted in the preceding paragraph and excepting also workmen's compensation insurance carried on by the members thereof solely for their own protection and not for profit), and each bond undertaking or recognizance, conditioned for the performance of the duties of any office or position, or for the doing or not doing of anything therein specified, or other obligation of the nature of indemnity, and each contract or obligation guaranteeing the validity or legality of bonds or other obligations issued by any State, county, municipal, or other public body or organization, or guaranteeing titles to real estate or mercantile credits executed or guaranteed by any liability, fidelity, guarantee, or surety company upon the amount of premium charged, one-half of 1 cent on each dollar or fractional part thereof: *Provided*, That policies of reinsurance shall be exempt from the tax herein imposed by this paragraph.

Passage ticket, for each passenger, sold in the United States for passage by any vessel to a foreign port or place, if costing not exceeding $30, $1; costing more than $30 and not exceeding $60, $3; costing more than $60, $5: *Provided*, That such passage tickets, costing $10 or less, shall be exempt from taxation.

Power of attorney or proxy for voting at any election for officers of any incorporated company or association, except religious, charitable, or literary societies, or public cemeteries, 10 cents.

Power of attorney to sell and convey real estate, or to rent or lease the same, to receive or collect rent, to sell or transfer any stock, bonds, scrip, or for the collection of any dividends or interest thereon, or to perform any and all other acts not hereinbefore specified, 25 cents: *Provided*, That no stamps shall be required upon any papers necessary to be used for the collection of claims from the United States for pensions, back pay, bounty, or for property lost in the military or naval service.

Protest: Upon the protest of every note, bill of exchange, acceptance, check, or draft, or any marine protest, whether protested by a notary public or by any other officer who may be authorized by the law of any State or States to make such protests, 25 cents.

Every seat sold in a palace or parlor car and every berth sold in a sleeping car, 1 cent, to be paid by the company selling the same.

**Conveyances.**

The tax under section 5 on a deed executed by a referee appointed in an action to foreclose a mortgage is not a tax on the State's exercise of its governmental functions, as the tax is on the business transaction involved in the purchase of the land and its transfer to the purchaser, and the transfer is in its nature the same as any transfer from one individual to another. (Home Title Ins. Co. of New York *v.* Keith, 230 Fed. 905, 1916.)

Revenue stamps of the proper amount must be attached to a deed executed by a master in chancery or other court officer empowered by a Federal court to make a sale of land and execute a conveyance, as a master appointed for such purpose performs no judicial function, and the tax is not imposed on a proceeding by the court but on the litigants. (Crawford *v.* New South Farm & Home Co., 231 Fed. 999, 1915.)

**Powers of attorney.**

While this section does not apply to a warrant of attorney authorizing an attorney at law to appear in an action on behalf of the maker, it does apply to powers of attorney generally, distinguished from warrants of attorney, in that they authorize laymen to act as attorneys in fact; and hence a general letter of attorney, authorizing the appointee to act for the signer in bankruptcy proceedings must be stamped.

The imposition of a stamp tax on certificates of any description required by law, not otherwise specified in the act does not render a certificate which is required to enable some officer of the court to exercise his functions, or to do some act connected with the administration of the government liable to tax, but certificates required of such officers by private persons are liable to such tax; and hence a referee in bankruptcy properly refused to certify an order approving the bond of the trustee, unless an internal revenue stamp was attached thereto. (In re Hawley 220 Fed. 372, 1915.)

Powers or letters of attorney authorizing attorneys to represent creditors in bankruptcy proceedings, vote for a trustee, etc., must bear an internal-revenue stamp, and, even if such powers or letters of attorney are unnecessary, when they are executed and presented, they are not exempt from the stamp tax. (In re Capitol Trading Co., Inc., 229 Fed. 806, 1916.)

**Insurance policies.**

A mutual fire insurance company, organized under the law of Ohio, without capital stock, and insuring property only of its members, is within the exemption of the act of October 22, 1914, and not subject to the stamp tax on its policies imposed thereby, although under the State statute it may and does charge a cash premium in advance, and maintains a reserve, on which it incidentally earns interest. (Niles *v.* Central Manufacturers' Mutual Ins. Co. and Same *v.* Ohio Underwriters' Mutual Fire Ins. Co., 252 Fed. 564, 1918.)

**Sales on exchange.**

Where offers were made to sell grain subject to deferred acceptance, only a small percentage of which developed into sales and on which the brokers received only $10 for each 10,000 bushels sold, the tax is based on the total price for which the seller agrees to sell, not merely on the basis of what the broker is to receive, since on the latter basis no tax would be due on the great majority of the offers and only a small amount on the largest of them, and, if that basis were to apply to offers, it should apply also to sales and agreements of sale which would lead to an absurdity.

This section imposes a tax on each sale or agreement to sell any grain, though during the day several separate sales are made of the same lot of grain or parts thereof and at the close of the day the only memorandum made shows the transfer from the original seller to the last buyer or buyers, since to hold otherwise would be to permit the parties by their own action to relieve themselves from liability for the tax after it had accrued. (Calkins *v.* Smietanka, 240 Fed. 138, 1917.)

## SECTION 22, SCHEDULE B—PROPRIETARY STAMP TAX.

SCHEDULE B.

Perfumery and cosmetics and other similar articles: For and upon every packet, box, bottle, pot, phial, or other inclosure containing any essence, extract, toilet water, cosmetic, vaseline, petrolatum, hair oil, pomade, hair dressing, hair restorative, hair dye, tooth wash, dentifrice, tooth paste, aromatic cachous, or any similar substance or article, by whatsoever name the same heretofore have been, now are, or may hereafter be called, known, or distinguished, used, or applied as perfumes or as cosmetics, and sold or removed for consumption and sale in the United States, where such packet, box, bottle, pot, phial, or other inclosure, with its contents, shall not exceed at the retail price or value the sum of 5 cents, one-eighth of 1 cent.

Where such packet, box, bottle, pot, phial, or other inclosure, with its contents, shall exceed the retail price or value of 5 cents, and shall not exceed the retail price or value of 10 cents, two-eighths of 1 cent.

Where such packet, box, bottle, pot, phial, or other inclosure, with its contents, shall exceed the retail price or value of 10 cents and shall not exceed the retail price or value of 15 cents, three-eighths of 1 cent.

Where such packet, box, bottle, pot, phial, or other inclosure, with its contents, shall exceed the retail price or value of 15 cents and shall not exceed the retail price or value of 25 cents, five-eighths of 1 cent. And for each additional 25 cents of retail price or value or fractional part thereof in excess of 25 cents, five-eighths of 1 cent.

Chewing gum or substitutes therefor: For and upon each box, carton, jar, or other package containing chewing gum of not more than $1 of actual retail value, 4 cents; if exceeding $1 of retail value, for each additional dollar or fractional part thereof, 4 cents; under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe.

That all articles and preparations provided for in this schedule which are in the hands of manufacturers or of wholesale or retail dealers on and after December first, nineteen hundred and fourteen, shall be subject to the payment of the stamp taxes herein provided for, but it shall be deemed a compliance with this act as to such articles on hand in the hands of wholesale or retail dealers as aforesaid who are not the manufacturers thereof to affix the proper adhesive tax stamp at the time the packet, box, bottle, pot, or phial, or other inclosure, with its contents, is sold at retail.

DRAWBACK.

There shall be an allowance of drawback on articles mentioned in Schedule B of this act on which any internal-revenue tax shall have been paid equal in amount to the stamp tax paid thereon, and no more, when exported, to be paid by the warrant of the Secretary of the Treasury on the Treasurer of the United States, out of any money arising from internal taxes not otherwise appropriated: *Provided*, That no allowance of drawback shall be made for any such articles exported prior to the date this act becomes effective. The evidence that any such tax has been paid as aforesaid shall be furnished to the satisfaction of the Commissioner of Internal Revenue by the person claiming the allowance of drawback, and the amount shall be ascertained under such regulations as shall be prescribed from time to time by said commissioner, with the approval of the Secretary of the Treasury.

**Stamp tax on chewing gum.**

Chewing gum removed from place of manufacture on Long Island to warehouse of manufacturer in St. Louis held not liable to stamp tax as movement from manufacture into consumption and trade had not yet begun. The act contemplated not merely the removal from the factory, but the removal for consumption and sale from all premises controlled by the manufacturer. (Amer. Chicle Co. *v.* United States, U. S. D. C. So. Dist. N. Y. Opinion of Judge Hand, unreported as yet, Oct., 1919.)

**SECTION 23—GENERAL PROVISIONS APPLICABLE.**

SEC. 23. That all administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this act, and every person, firm, company, corporation, or associa-

tion liable to any tax imposed by this act, or for the collection thereof, shall keep such records and render, under oath, such statements and returns, and shall comply with such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may from time to time prescribe, and every such person, firm, company, corporation, or association who evades or attempts to evade any of the taxes imposed by this act, or shall fail to truly account for and pay all taxes collected by them under this act, or any regulations issued thereunder, shall be subject to a penalty of double the amount of the taxes evaded or attempted to be evaded or unlawfully withheld, to be assessed and collected as other penalties incurred under internal-revenue laws are assessed and collected; and for the expense connected with the assessment and collection of the taxes provided by this act there is hereby appropriated $200,000, or so much thereof as may be required, out of any money in the Treasury not otherwise appropriated; $170,000 to be added to and made a part of the appropriations for "salaries and expenses of collection of internal revenue, nineteen hundred and fifteen; and $30,000 to the appropriation for paper for internal-revenue stamps, nineteen hundred and fifteen."

**Penalties.**

Case 1. Section 3224, R. S., prohibiting suit to enjoin collection of any tax, applies to the penalty which this act by section 23 provides shall be assessed and collected as other penalties incurred under internal-revenue laws are assessed and collected.

Case 2. Section 3176, R. S., is one of the administrative provisions of law by reference made part of the act, providing that the amount fixed as a penalty shall be added to the tax and collected as part of it. An internal-revenue collector under section 23 of this act has authority under section 3182, R. S., to make assessment of penalties arising under the act. (Kohlhamer *v.* Smietanka, 239 Fed. 408, 1917.)

Case 3. One seeking to enjoin collection of penalties for nonpayment of internal-revenue taxes has not, as is required of one seeking equity, done equity not having paid or tendered the taxes admitted to be due. (Id.)

Case 4. One is not relieved from the penalty provided by section 23 of this act, for failure to pay the tax, by section 22, making his default, when accompanied by criminal intent, a misdemeanor. (Id.)

**Assessments.**

Case 5. Section 3182, R. S., authorizing the Commissioner of Internal Revenue to make assessments of all taxes and penalties imposed by that title, authorizes him to make assessment of all taxes that were imposed by congressional enactment, and which came under the heading of "internal revenue." (Calkins *v.* Smietanka, 240 Fed. 138, 1917.)

Case 6. Section 3176, R. S., is not a limitation of the power granted by section 3182, R. S. If Congress intended to limit this power by amendment through the act of September 8, 1916, it would have proceeded to amend section 3182, R. S., and not section 3176, R. S. (Id.)

Case 7. Section 3176, R. S., as amended, did not take away from the Commissioner the power given by the other statutes to assess the tax on sales of grain, on exchange, on memoranda of which the stamps were not affixed. (Id.)

Case 8. Section 3224, R. S., providing that no suit to restrain the assessment or collection of any tax shall be maintained in any court, forbids the issuance of an injunction to restrain the Commissioner of Internal Revenue from assessing the taxes on sales of grain to which no stamps were affixed; the only remedy of the taxpayer being by suit to recover the tax after payment as provided in section 3226, R. S. (Id.)

Case 9. Section 3224, R. S., providing that no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court, applies to a suit to restrain proceedings to make the assessments, since assessment can not fairly be limited to the mental act of the officer who determines the amount of the tax, but includes the preliminary investigation as well as the final determination. (Id.)

**Production of books.**

Case 10. Section 3173, R. S., authorizes the Commissioner to compel the production of books of grain brokers who have failed to pay the stamp tax imposed on sales of grain on exchange by section 22, Schedule A of this act. (Id.)

# OPIUM ACTS.

## HARRISON ANTI-NARCOTIC ACT OF DECEMBER 17, 1914.

[H. R. 6282.]

AN ACT To provide for the registration of, with collectors of internal revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, or preparations, and for other purposes.

*Be it enacted, etc.*, That on and after the first day of March, nineteen hundred and fifteen, every person who produces, imports, manufactures, compounds, deals in, dispenses, sells, distributes, or gives away opium or coca leaves or any compound, manufacture, salt, derivative, or preparation thereof, shall register with the collector of internal revenue of the district his name or style, place of business, and place or places where such business is to be carried on: *Provided*, That the office, or if none, then the residence of any person shall be considered for the purposes of this act to be his place of business. At the time of such registry and on or before the first day of July, annually thereafter, every person who produces, imports, manufactures, compounds, deals in, dispenses, sells, distributes, or gives away any of the aforesaid drug shall pay to the said collector a special tax at the rate of $1 per annum: *Provided*, That no employee of any person who produces, imports, manufactures, compounds, deals in, dispenses, sells, distributes, or gives away any of the aforesaid drugs, acting within the scope of his employment, shall be required to register or to pay the special tax provided by this section: *Provided further*, That the person who employs him shall have registered and paid the special tax as required by this section: *Provided further*, That officers of the United States Government who are lawfully engaged in making purchases of the above-named drugs for the various departments of the Army and Navy, the Public Health Service, and for Government hospitals and prisons, and officers of any State government, or of any county or municipality therein, who are lawfully engaged in making purchases of the above-named drugs for State, county, or municipal hospitals or prisons, and officials of any Territory or insular possession or the District of Columbia or of the United States who are lawfully engaged in making purchases of the above-named drugs for hospitals or prisons therein shall not be required to register and pay the special tax as herein required.

It shall be unlawful for any person required to register under the terms of this act to produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away any of the aforesaid drugs without having registered and paid the special tax provided for in this section.

That the word "person" as used in this act shall be construed to mean and include a partnership, association, company, or corporation, as well as a natural person; and all provisions of existing law relating to special taxes, so far as applicable, including the provisions of section thirty-two hundred and forty of the Revised Statutes of the United States are hereby extended to the special tax herein imposed.

That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make all needful rules and regulations for carrying the provisions of this act into effect.

GENERAL PROVISIONS.

### Construction.

The above act providing that persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away any opium or coca leaves must register and pay a special tax, and making it unlawful to fail to do so is a criminal statute, and must be strictly construed. (United States *v.* Wilson, 225 Fed. 82, 1915.)

In construing an act of Congress, while the court may not recur to the views of individual members expressed in debate, nor consider the motive which influenced them in voting, it may consider the history of the times to ascertain the reason for the legislation and under appropriate circumstances the mode in which particular language was introduced into the law as shown by the journals and records. (Tucker et al. *v.* Williamson, 229 Fed. 201, 1915.)

The provisions of the act exacting a license as a condition for the sale, dispensing, or distribution of drugs are not an exercise of the police power, but are for the purpose of revenue, and such license is a mere form of imposing a tax, and implies nothing more than that the licensee shall not be subject to the penalties of the act . (Id.)

The act must be construed with reference to the known usages and modes of practice in the profession, in which the prescribing for patients without personal examination is the rare exception and not the rule. (Id.)

Plaintiff imported novocaine, which is made from benzol derived from coal tar. No other commercial method of manufacture existed, though novocaine might be chemically obtained from coca leaves. It is not used as a liniment, ointment, or preparation for external use, but is a local anesthetic used by injection. *Held,* That, though novocaine might be used as a habit-forming drug, it can not, the Harrison Act being a revenue measure the terms of which must be construed in their ordinary meaning, be treated as a derivative of coca leaves or as a liniment or ointment or other preparation for external use containing cocaine; for the words "other preparation" must be construed under the principle of ejusdem generis in connection with liniments. (Lowe *v.* Farbwerke-Hoechst Co., 240 Fed. 671, 1917.)

A statute must be so construed, if fairly possible, as to avoid not only the conclusion that it is unconstitutional, but also grave doubts upon that score.

This court can not assume to know judicially that no opium is produced in this country; nor is it warranted in so assuming when construing a statute itself purporting to deal with producers of that article.

When Congress contemplates the production of an article within the United States, this court must construe the act on the hypothesis that such production takes place.

An attempt of Congress to make possession of an article—in this case opium—produced in any of the States a crime, would raise the gravest question of power. (United States *v.* Jin Fuey Moy, 241 U. S. 394, 1916.) See later case between same parties pending in United States Supreme Court.

In construing a statute which calls itself a registration or taxing act and does not purport to be in execution of a treaty and which

contains a provision not required by any treaty, a grave doubt arises whether such a statute is entitled to the supremacy claimed for treaties on the ground that it does in effect carry out existing treaty obligations on the general subject of both treaty and statute.

While the opium registration act of December 17, 1914, may have a moral end, as well as revenue, in view, this court, influenced by the grave doubts of its constitutionality except as a revenue measure, construes it as such.

Every question of construction is unique, and an argument that might prevail in one case may be inadequate in another.

Only definite words will warrant the conclusion that Congress intended to strain its powers almost, if not quite, to the breaking point, to make a great proportion of citizens prima facie criminals by mere possession of an article. (United States *v.* Jin Fuey Moy, 241 U. S. 394, 1916.) See later case between same parties pending in United States Supreme Court.

**Constitutionality.**

Opium or coca leaves, their salts, derivatives, or preparations, being exclusively foreign products, it was within the power of Congress in the interest of the general welfare to exclude their importation entirely, or to so regulate the traffic in them that their importations may be traced, as was done by act December 17, 1914, and hence, to sustain the constitutionality of that act, it is not necessary to hold that it is designed to protect the revenues of the United States. (United States *v.* Charter, 227 Fed. 331, 1915.)

Harrison Antinarcotic Law, section 2, forbidding any person selling opium to another not presenting a written blank furnished by a revenue collector, is not invalid as a revenue provision, though its chief purpose may be to control distribution, by empowering physicians exclusively to distribute the drug only as a medicine, and thereby suppress consumption by addicts. (United States *v.* Rosenberg, 251 Fed. 963, 1918, and Hughes *v.* United States, 253 Fed. 543, 1918.)

The act is constitutional. (United States *v.* Denker et al. and Same *v.* Bernstein et al., 255 Fed. 339, 1918.)

The provisions of section 2 of the act have direct relation to the revenue provision of the act and are within the constitutional powers of Congress. (Foreman *v.* United States, 255 Fed. 621, 1918.)

The Harrison Antinarcotic Act is not unconstitutional. (United States *v.* Hoyt, 255 Fed. 927, 1917.)

Sections 1 and 2 of the act are constitutional. (United States *v.* Loewenthal, 257 Fed. 444, 1919.)

The administrative provisions of the act, section 1, relating to taxation and registration, are valid. (Stetson *v.* United States, 257 Fed. 689, 1919.)

Section 2 of the act is constitutional. (Thompson *v.* United States, 258 Fed. 196, 1919.)

The first sentence of section 2 of the act prohibits retail sales of morphine by druggists to persons who have no physician's prescription, who have no order blank therefor, and who can not obtain an order blank because not of the class to which such blanks are allowed to be issued under the act. This construction does not make unconstitutional the prohibition of such sale. (United States *v.* Doremus, 249 U. S. 86, and Webb et al. *v.* United States, 249 U. S. 96, 1919.)

While Congress may not exert authority which is wholly reserved to the States, the power conferred by the Constitution to levy excise taxes, uniform throughout the United States, is to be exercised at the discretion of Congress, and where the provisions of the law enacted have some reasonable relation to this power the fact that they may have been impelled by a motive, or may accomplish a purpose, other than the raising of revenue, can not invalidate them; nor can the fact that they affect the conduct of the business which is subject to regulation by the State police power. *Held,* that the provisions of section 2 have a reasonable relation to the enforcement of the tax provided by section 1 (which is clearly unobjectionable), and do not exceed the power of Congress. (U. S. *v.* Doremus, 249 U. S. 86, reversing 246 Fed. 958, 1919. Followed in Webb *v.* U. S., 249 U. S. 96, 1919.)

**Evidence—In prosecutions for violations of the act.**

The court will take judicial notice of the fact that opium is not grown or produced in the United States. (United States *v.* Brown, 224 Fed. 135, 1915.) But see next case.

This court can not assume to know judicially that no opium is produced in this country. (United States *v.* Jin Fuey Moy, 241 U. S. 394, 1916, affirming 225 Fed. 1003.) See later case between same parties pending in United States Supreme Court.

Where the evidence abundantly supported more than one of the five counts charging the defendant with violating the act of December 17, 1914, and the sentence imposed was such as could have been imposed under section 9 of that act for a single offense, the judgment will not be reversed for errors affecting only one count. (Baldwin *v.* United States, 238 Fed. 793, 1917.)

In a prosecution under Harrison Antinarcotic Act, section 2, against a physician who sold large quantities of narcotics to habitual users of the drug, medical testimony as to recognized methods among physicians for treating persons addicted to the use of narcotic drugs was admissible, for the purpose of showing that the accused physician did not come within the exception as to physicians dispensing drugs in the course of their practice, for, while the act is in the guise of a revenue measure, it was intended to accomplish a moral purpose.

In a prosecution against a physician for violating Harrison Antinarcotic Act, section 2, by dispensing narcotics to habitual users of

the drug, the exclusion of a letter from the Commissioner of Internal Revenue in response to a query by defendant physician as to dispensing of narcotics held proper.

Evidence that defendant, a physician, dispensed the drug to addicts and to persons other than those specified in the indictment is admissible to show his intent. (Thompson *v.* United States, 258 Fed. 196, 1919.)

The courts take judicial notice of the facts of chemistry contained in the United States Pharmacopœia.

In prosecution of a physician for violating the Harrison Narcotic Act order forms used by defendant to procure morphine from a druggist other than the one with whom he was charged with having conspired and with having made a sale were admissible on the issue of intent to furnish the drug to an addict, and not to aid or cure a patient in his practice as a physician.

In prosecution of physicians for violating the Harrison Narcotic Act the testimony of qualified medical experts that the prescribing of the drug under stated quantities and circumstances would not be in the course of a physician's regular practice was admissible on the issue whether the drug was dispensed in the legitimate course of defendant's practice as physicians. (Melanson *v.* United States and Ellsworth *v.* Same, 256 Fed. 783, 1919.)

**Indictments—In prosecutions for violations of the act.**

Indictments charging that defendants knowingly, unlawfully, and feloniously had in their possession and under their control smoking opium, not having theretofore registered with the collector of internal revenue, as required by act December 17, 1914, and not having theretofore paid the special tax provided for thereby, but not alleging that defendants were in any of the classes thereby required to register and pay such tax, were fatally defective in substance, and too uncertain to be sustained, since, when an offense can be committed by only certain classes or persons, the indictment must allege that accused is in one of those classes. (United States *v.* Woods (and five like cases) 224 Fed. 278, 1915.)

In view of sections 1, 2, and 8 of the act an indictment charging defendant with conspiring with M. to have a dram of opium in the possession and under the control of M., and as the overt act charging that defendant issued to M. a prescription therefor, in bad faith, knowing it was not given for medicinal purposes, but for supplying one addicted to the use of opium, is insufficient; the unlawful thing charged consisting in having the drug in the possession and under the control of M., the word "person" in section 8 referring only to those required by the act to register and pay the tax, and it not being alleged M. had the drug in his possession for any of the purposes for which he would have to register and pay the tax. (United

States *v.* Jin Fuey Moy, 225 Fed. 1003, 1915, affirmed in 241 U. S. 394, 1916.)

Statutes creating and defining crimes can not be extended by implication or intendment, and an indictment under such a statute must allege directly and with certainty every element essential to bring the offense within its terms.

Where a statute defining an offense contains an exception in the clause creating the offense, which is so incorporated with the language defining it that the offense can not be accurately and clearly described, if the exception is omitted, the indictment must allege enough to show that the accused is not within the exception; but, if the language creating the offense is so completely separable from the exception that the essential ingredients of the offense may be accurately and clearly defined without any reference to the exception, it need not be negatived therein, but it is a matter of defense.

An indictment under Harrison Antinarcotic Act December 17, 1914, section 8 (38 Stat. 789), charging that defendant not having registered and paid the special tax required by section 1 of the act, had in his possession a quantity of morphine, is insufficient to charge an offense where it is not alleged that he was engaged in a business which required him to register and pay such special tax.

Exemptions from liability for offenses created by acts of Congress are matters of defense; but matters excepted from the granting clause of the act are not within the terms of the act, and such matters must be negatived in the indictment or complaint. (United States *v.* Carney, 228 Fed. 163, 1915.)

Under sections 1 and 8 of the act an indictment charged that in violation of section 1 defendant unlawfully sold, dispensed, and distributed morphine sulphate tablets as a dealer to a consumer. *Held*, that this was equivalent to charging that he had them in his possession, and hence an offense was charged; but, as the offenses were charged as violations of section 1, proof of registration and the payment of the special tax would be a complete defense. (United States *v.* Curtis, 229 Fed. 288, 1916.)

Indictment for such offense must allege it was committed within the essential period, or it fails to allege an offense.

Under Revised Statutes, section 1025, excusing defects of form, indictment charging that defendant violated the antidrug act by giving an order for opium, and, after acceptance, failing to preserve a duplicate so as to be readily accessible, was sufficient, though alleging the date of the offense no more definitely than some unknown date within the essential two-year period, which did not tend to defendant's prejudice.

To the requirement that an indictment must allege a day certain, there are two fairly recognized exceptions: Misdemeanors, and offenses of omission, rather than of commission.

Violation of the antidrug act by giving an order for opium, and, after acceptance, failing to preserve a duplicate so as to be readily accessible, is an offense in nature but a misdemeanor, failure to obey an administrative regulation, a mere statutory infraction, and not a true crime, though made a felony by Penal Code (act Mar. 4, 1909) section 335 (35 Stat. 1152).

An indictment charging violations of the antidrug act, in that defendant gave an order for opium and failed to preserve a duplicate after acceptance so as to be readily accessible, need not allege the offense as of a day certain; the charge being an omission to perform a statutory duty. (United States *v.* Gaag, 237 Fed. 728, 1916.)

Indictment under Harrison Narcotic Act, sections 1, 2, charging accused with dealing in forbidden drugs without having registered and paid the special tax, *Held*, not bad for duplicity, or because vague, indefinite, and uncertain. (United States *v.* Loewenthal, 257 Fed. 444, 1919.)

An indictment for violation of the Harrison Narcotic Drug Act which described defendant as not being then and there an officer of the Federal Government or State government engaged in making purchases of the specified drug, and not being any other officer entitled to make such purchases, *Held*, not insufficient, as failing to negative all statutory exceptions from the operation of the statute by section 1.

An indictment is sufficiently certain if it fairly informs accused of the crime intended to be charged, so as to enable him to prepare his defense, and so as to make the judgment a complete defense to a second prosecution.

Count of indictment for violation of the Harrison Narcotic Drug Act, *Held*, not bad, as not negativing the exception of section 6, that the provisions of the act shall not be construed to apply to the dispensing of remedies not containing more than a quarter of a grain of morphine, etc. (Stetson *v.* United States, 257 Fed. 689, 1919.)

An exception in the enacting clause of a penal statute must be negatived by the indictment, but an exception in a later section need not be negatived.

Description of a statutory offense in the language of the statute is sufficient, provided the language used according to its natural import fully describes the offense.

Indictment for violation of the Harrison Narcotic Drug Act stating the charge substantially, though not literally, in the language of section 1 of the act, fully defining the offense, and also alleging the sale of morphine in certain so-called morphine checks and other forms, *Held*, sufficient. (Stetson *v.* United States, 257 Fed. 689, 1919.)

An indictment under section 2 charged that accused gave an order to a certain person for one of such drugs, and that he failed to preserve a duplicate of the order for two years, and also failed to keep a record of the amount of the drug by him dispensed and distributed. *Held*, that this was not an attempt to plead in the alternative, nor did it plead two violations of the law, as a physician is excused from failing to keep a duplicate of the order only when he keeps a record of his dispensing, and the indictment alleged the absence of the exception, which makes the provision for the retention of the duplicate of the order unnecessary. (United States *v.* Charter, 227 Fed. 331, 1915.)

An indictment charging in substance that defendant did "dispense, distribute, and sell" a derivative of opium to persons named without a written order on the prescribed form and not in the course of his professional practice as a physician, *Held*, to charge an offense under Harrison Narcotic Act, Dec. 17, 1914, section 2. (Foreman *v.* United States, 255 Fed. 621, 1918.)

Though section 2 declares that nothing in the section shall apply to registered physicians who distribute narcotics in their professional practice, *Held*, that an indictment, though averring that defendant was a registered physician, charged with a violation of section 2, in that he sold and dispensed heroin not in his professional practice, and in that the sale was not made in pursuance of a written order on a blank issued by the Commissioner of Internal Revenue.

An indictment charging a violation of section 2 in that defendant sold and dispensed heroin, not on a written order on a blank issued by the Commissioner of Internal Revenue, *Held*, not uncertain, ambiguous, and duplicitous, though it was averred that the defendant was a registered physician. (United States *v.* Hoyt, 255 Fed. 927, 1917.)

An indictment charging violation of the Harrison Narcotic Act which averred that defendant at the time of the offense knew that cocaine was a derivative of coca leaves, and that morphine and heroin were salts and derivatives of opium, sufficiently averred by implication the fact that cocaine was a derivative of such leaves, and that morphine and heroin are salts or derivatives of opium.

In view of section 1025, Revised Statutes, imperfections in indictment for violating the Harrison Narcotic Act in that it did not aver that cocaine is a derivative of coca leaves, and that morphine or heroin are salts or derivatives of opium, *Held*, harmless imperfections, carrying no consequences.

Under section 8 indictments charging violation of the act were not defective, because not averring facts showing defendants did not come within any of the exceptions of the act. (Melanson *v.* United States and Ellsworth *v.* Same, 256 Fed. 783, 1919.)

Under section 1025, Revised Statutes, providing that defects of form, not prejudicing defendant, shall not invalidate indictments, and Harrison Narcotic Act, section 8, relative to negativing exceptions in an indictment, an indictment under sections 1 and 2 of the Harrison Act need not negative exceptions in those sections. (United States *v.* Lowenthal, 257 Fed. 444, 1919.)

**Powers of Congress.**

Congress may prohibit the importation of opium and regulate its relation to interstate commerce, as is done by act of December 17, 1914, providing for the registration with collectors of internal revenue of dealers in opium, imposing a tax on dealers, and making it unlawful for any person who has not registered and paid the tax to have in his possession any opium or derivative thereof, and providing that such possession shall be presumptive evidence of a violation of the act. (United States *v.* Brown, 224 Fed. 135, 1915.)

**Questions for the jury—Prosecutions for violations of the act.**

In prosecutions of physicians for having conspired to violate the Harrison Narcotic Act and having made sales illegally, question whether or not each defendant had conspired with a druggist, a co-defendant, to dispense the drug in the guise of prescriptions to patients but really to addicts for the gratification of their appetite, and not for their cure, *Held*, for the jury under the evidence.

In prosecution of physicians for sale of drugs in violation of Harrison Narcotic Act whether dispensing of drug in each case was a dispensing of it by a physician to a patient, in which case no order form was required, or whether the form of prescription was used by defendants as an evasion of the law, and not in good faith, in which case the dispensing would be a sale, and an order form necessary to bring it within the law, *Held*, for the jury.

In prosecution of physicians for having violated the Harrison Narcotic Act whether two persons were consumers of the drug and not patients of defendants, and whether defendants and the druggist on whom they issued prescriptions, their codefendant, knew the true character in which such persons sought to procure the drugs, *Held*, for the jury. (Melanson *v.* United States and Ellsworth *v.* Same, 256 Fed. 783, 1919.)

In prosecution of physicians for having violated and conspired to violate the Harrison Narcotic Act the trial court in his general charge properly submitted an issue as to the good faith of defendants in issuing their prescriptions to supposed patients, since the defendants could only protect themselves if the prescriptions were issued legitimately in their practice. (Id.)

### SECTION I—REGISTRATION.

As taxes can be imposed and statutory offenses created only by direct, clear, and apt language, the act does not impose the duty of registration and the payment of taxes upon mere consumers of the drugs, and only makes unlawful possession of the drugs by persons required to register and pay the tax, who have not done so. (United States *v.* Woods, 224 Fed. 278, 1915.)

For indictments under this section, see heading of "Indictments."

### SECTION II—ORDERS.

SEC. 2. That it shall be unlawful for any person to sell, barter, exchange, or give away any of the aforesaid drugs except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged, or given, on a form to be issued in blank for that purpose by the Commissioner of Internal Revenue. Every person who shall accept any such order, and in pursuance thereof shall sell, barter, exchange, or give away any of the aforesaid drugs, shall preserve such order for a period of two years in such a way as to be readily accessible to inspection by any officer, agent, or employee of the Treasury Department duly authorized for that purpose, and the State, Territorial, District, municipal, and insular officials named in section five of this act. Every person who shall give an order as herein provided to any other person for any of the aforesaid drugs shall, at or before the time of giving such order, make or cause to be made a duplicate thereof on a form to be issued in blank for that purpose by the Commissioner of Internal Revenue, and in case of the acceptance of such order, shall preserve such duplicate for said period of two years in such a way as to be readily accessible to inspection by the officers, agents, employees, and officials hereinbefore mentioned. Nothing contained in this section shall apply—

(a) To the dispensing or distribution of any of the aforesaid drugs to a patient by a physician, dentist, or veterinary surgeon registered under this act in the course of his professional practice only: *Provided*, That such physician, dentist, or veterinary surgeon shall keep a record of all such drugs, dispensed or distributed, showing the amount dispensed or distributed, the date, and the name and address of the patient to whom such drugs are dispensed or distributed, except such as may be dispensed or distributed to a patient upon whom such physician, dentist, or veterinary surgeon shall personally attend; and such record shall be kept for a period of two years from the date of dispensing or distributing such drugs, subject to inspection, as provided in this act.

(b) To the sale, dispensing, or distribution of any of the aforesaid drugs by a dealer to a consumer under and in pursuance of a written prescription issued by a physician, dentist, or veterinary surgeon registered under this act: *Provided, however*, That such prescription shall be dated as of the day on which signed and shall be signed by the physician, dentist, or veterinary surgeon who shall have issued the same: *And provided urther*, That such dealer shall preserve such prescription for a period of two years from the day on which such prescription is filled in such a way as to be readily accessible to inspection by the officers, agents, employees, and officials hereinbefore mentioned.

(c) To the sale, exportation, shipment, or delivery of any of the aforesaid drugs by any person within the United States or any Territory or the District of Columbia or any of the insular possessions of the United States to any person in any foreign country, regulating their entry in accordance with such regulations for importation thereof into such foreign country as are prescribed by said country, such regulations to be promulgated from time to time by the Secretary of State of the United States.

(d) To the sale, barter, exchange, or giving away of any of the aforesaid drugs to any officer of the United States Government or of any State, Territorial, District, county, or municipal or insular government lawfully engaged in making purchases thereof for the various departments of the Army and Navy, the Public Health Service, and for Government, State, Territorial, District, county, or municipal or insular hospitals or prisons.

The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall cause suitable forms to be prepared for the purposes above mentioned, and shall cause the same to be distributed to collectors of internal revenue for sale by them to those persons who shall have registered and paid the special tax as required by section one of this act in their districts, respectively; and no collector shall sell any of such forms to any persons other than a person who has registered and paid the special tax as required by section one of this act in his district. The price at which such forms shall be sold by said collectors shall be fixed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, but shall not exceed the sum of $1 per hundred. Every collector shall keep an account of the number of such forms sold by him, the names of the purchasers, and the number of such forms sold to each of such purchasers. Whenever any collector shall sell any of such forms, he shall cause the name of the purchaser thereof to be plainly written or stamped thereon before delivering the same; and no person other than such purchaser shall use any of said forms bearing the name of such purchaser for the purpose of procuring any of the aforesaid, drugs, or furnish any of the forms bearing the name of such purchaser to any person with intent thereby to procure the shipment or delivery of any of the aforesaid drugs. It shall be unlawful for any person to obtain by means of said order forms any of the aforesaid drugs for any purpose other than the use, sale, or distribution thereof by him in the conduct of a lawful business in said drugs or in the legitimate practice of his profession.

The provisions of this act shall apply to the United States, the District of Columbia, the Territory of Alaska, the Territory of Hawaii, the insular possessions of the United States, and the Canal Zone. In Porto Rico and the Philippine Islands the administration of this act, the collection of the said special tax, and the issuance of the order forms specified in section two shall be performed by the appropriate internal-revenue officer of those governments, and all revenues collected hereunder in Porto Rico and the Philippine Islands shall accrue intact to the general governments thereof, respectively. The courts of first instance in the Philippine Islands shall possess and exercise jurisdiction in all cases arising under this act in said islands. The President is authorized and directed to issue such Executive orders as will carry into effect in the Canal Zone the intent and purpose of this act by providing for the registration and the imposition of a special tax upon all persons in the Canal Zone who produce, import, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, or preparations.

Section 8 has no relation to the failure of a registered physician to keep a duplicate of an order given by him for the prescribed drugs, or a record of the amount of any such drugs dispensed and distributed by him as required by section 2. (United States *v.* Charter, 227 Fed. 331, 1915.)

(a) Under the provisions of section 2 a physician is not prohibited from dispensing or distributing in the course of his professional practice and without a written order a narcotic to a patient employing him because of the fact that he does not personally attend such patient, but that in such case he is required to keep the prescribed record. (Tucker *v.* Williamson, 229 Fed. 201, 1915.)

(a) Under General Code, Ohio, section 1286, a person who examines patients, diagnoses their diseases, and then prescribes and sells his own proprietary remedies is engaged in the practice of medicine, although his ostensible and apparent motive may be the sale of his medicines, and he is subject to the laws of the State regulating such practice.

(a) While the Harrison Narcotic Act of December 17, 1914, permits a physician in the course of his professional practice to dispense and distribute the mentioned narcotics to a patient by whom he is employed to prescribe, without being subject to the prescribed regulations, although he does not personally attend such patient, the act must be construed with reference to the known usages and modes of practice in the profession, in which the prescribing for patients without personal examination is the rare exception and not the rule; and under the provisions of section 1, requiring the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury to "make all needful rules and regulations for carrying the provisions of this act into effect," the commissioner has authority to prescribe what shall constitute "personal attendance" and "professional practice" by a physician within the meaning of the act, and a regulation which denied the right of registration and exemption to one who, although a licensed physician, does not see most of his patients, who bases most of his prescriptions on their written statements sent to him through the mails, and who prescribes the same remedy for all alike, is within the power conferred and valid. (Tucker *v.* Williamson, 229 Fed. 201, 1915.)

(a) A physician who issues a prescription for an unusually large amount of the drugs, which prescription shows on its face that the quantity prescribed is unreasonable and unusual, or a dealer who fills such a prescription or order issued by a physician, is guilty of an offense, unless the prescription indicates the necessity for such an unusual quantity. (United States *v.* Curtis, 229 Fed. 228, 1916.)

(a) It is an offense for a registered physician to sell narcotics. (Thompson *v.* United States, 258 Fed. 196, 1919.)

(b) The offense of giving an order for opium and failing to preserve a duplicate thereof in such a way as to be readily accessible, is committed when ready accessibility first fails after the order's acceptance, and is capable of continuity. (United States *v.* Gaag, 237 Fed. 728, 1916.)

(b) If a practicing and registered physician issues an order for morphine to an habitual user thereof, the order not being issued by him in the course of professional treatment in the attempted cure of the habit, but for the purpose of providing the user with morphine sufficient to keep him comfortable by maintaining his customary use, such order is not a physician's prescription under exception (b) of section 2 of the act. Webb et al. *v.* United States, 249 U. S. 96, 1919.)

(b) *Definitions.*—To "dispense" is to deal out or divide out generally, while to "distribute" is to deal or divide out in proportion or in shares.

(b) The mere issuance of a prescription by a physician for a narcotic drug, to be filled by any druggist, without participation by the physician in the sale made under it is not a sale or such dispensing or distribution as amounts to a sale within the meaning of Harrison Narcotic Act, December 17, 1914, section 2. (Foreman *v.* United States, 255 Fed. 621, 1918.)

### SECTION 6—NARCOTIC CONTENT INCURRING LIABILITY.

SEC. 6. That the provisions of this act shall not be construed to apply to the sale, distribution, giving away, dispensing, or possession of preparations and remedies which do not contain more than two grians of opium, or more than one-fourth of a grain of morphine, or more than one-eighth of a grain of heroin, or more than one grain of codeine, or any salt or derivative of any of them in one fluid ounce, or, if a solid or semisolid preparation, in one avoirdupois ounce; or to liniments, ointments, or other preparations which are prepared for external use only, except liniments, ointments, and other preparations which contain cocaine or any of its salts, or alpha or beta eucaine or any of their salts, or any synthetic substitute for them: *Provided*, That such remedies and preparations are sold, distributed, given away, dispensed, or possessed as medicines and not for the purpose of evading the intentions and provisions of this act. The provisions of this act shall not apply to decocainized coca leaves or preparations made therefrom, or to other preparations of coca leaves which do not contain cocaine.

SEC. 7. That all laws relating to the assessment, collection, remission, and refund of internal-revenue taxes, including section thirty-two hundred and twenty-nine of the Revised Statutes of the United States, so far as applicable to and not inconsistent with the provisions of this act, are hereby extended and made applicable to the special taxes imposed by this act.

Under the provisions of section 6 the sale or dispensing of large and unusual quantities of the drugs, unaccompanied by explanation as to the necessity therefor, is the sale and dispensing thereof for the very purpose of evading the intent of the act and unlawful. (United States *v.* Curtis, 229 Fed. 288, 1916.)

See also cases under heading "Indictments."

"Preparations and remedies," contained in section 6 of this act, *held* not to include clear morphine, but to relate to actual medicinal preparations and remedies not containing more than a quarter of a grain of morphine, remedies such as a physician or druggist would normally dispense.

In a prosecution for violation of the Harrison Narcotic Drug Act, defendant not being charged as a physician or a druggist, and the indictment not negativing the exception of section 6 of the act, it was open to him to show he was merely dispensing medicinal preparations and remedies containing not more than the amount of morphine permitted by section 6.

Objection to indictment for violating the Harrison Narcotic Drug Act, in that it did not negative the exception of section 6 relative to

the dispensing of preparations and remedies not containing more than a quarter of a grain of morphine, *held* technical, unsubstantial, and unprejudicial, and within the terms of Judicial Code, section 269, as amended February 26, 1919. (Stetson *v.* United States, 257 Fed. 689, 1919.)

### SECTION 8—POSSESSION OF NARCOTICS.

SEC. 8. That it shall be unlawful for any person not registered under the provisions of this act, and who has not paid the special tax provided for by this act, to have in his possession or under his control any of the aforesaid drugs; and such possession or control shall be presumptive evidence of a violation of this section, and also of a violation of the provisions of section one of this act: *Provided*, That this section shall not apply to any employee of a registered person, or to a nurse under the supervision of a physician, dentist, or veterinary surgeon registered under this act, having such possession or control by virtue of his employment or occupation and not on his own account; or to the possession of any of the aforesaid drugs which has or have been prescribed in good faith by a physician, dentist, or veterinary surgeon registered under this act; or to any United States, State, county, municipal, District, Territorial, or insular officer or official who has possession of any said drugs, by reason of his official duties or to a warehouseman holding possession for a person registered and who has paid the taxes under this act; or to common carriers engaged in transporting such drugs: *Provided further*, That it shall not be necessary to negative any of the aforesaid exemptions in any complaint, information, indictment, or other writ or proceeding laid or brought under this act; and the burden of proof of any such exemption shall be upon the defendant.

SEC. 9. That any person who violates or fails to comply with any of the requirements of this act shall, on conviction, be fined not more than $2,000 or be imprisoned not more than five years, or both, in the discretion of the court.

SEC. 10. That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized to appoint such agents, deputy collectors, inspectors, chemists, assistant chemists, clerks, and messengers in the field and in the Bureau of Internal Revenue in the District of Columbia as may be necessary to enforce the provisions of this act.

SEC. 11. That the sum of $150,000, or so much thereof as may be necessary, be, and hereby is, appropriated, out of any moneys in the Treasury not otherwise appropriated, for the purpose of carrying into effect the provisions of this act.

SEC. 12. That nothing contained in this act shall be construed to impair, alter, amend, or repeal any of the provisions of the act of Congress approved June thirtieth, nineteen hundred and six, entitled "An act for preventing the manufacture, sale, or transportation of adulterated or misbranded, or poisonous, or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes," and any amendment thereof, or of the act approved February ninth, nineteen hundred and nine, entitled "An act to prohibit the importation and use of opium for other than medicinal purposes," and any amendment thereof.

Approved, December 17, 1914.

See also the heading "Evidence" and "Indictments."

Section 8 refers only to those who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away as enumerated in section 1; hence the mere keeping of a small quantity of opium for personal use does not constitute an offense within the meaning of the act.

Section 8 establishes the rule of evidence that, upon proof that a defendant was producing, importing, manufacturing, dealing in, dispensing, selling, distributing, or giving away, as mentioned in section 1, clause 1, opium or coca leaves, and that a narcotic was found in his possession, he is presumptively guilty of violating the act that then the burden of proof is upon defendant to show affirmatively that he is not one of the class mentioned in section 1 as being required to register, or, if so, that he had registered and paid the special tax.

In a prosecution under this act the uncontradicted evidence that defendant obtained the opium found in her possession from a Chinaman, and that she had it for her personal use and consumption, and that she never sold, gave away, or dealt in it in any form was held to overcome the presumption of guilt arising from the possession of opium under section 8 of the act, providing that possession or control of opium shall be presumptive evidence of a violation of the act. (United States *v.* Wilson, 225 Fed. 82, 1915.)

*Held*, that section 8 has no relation to the failure of a registered physician to keep a duplicate of an order given by him for the prescribed drugs, or a record of the amount of any such drugs dispensed and distributed by him as required by section 2. (United States *v.* Charter, 227 Fed. 331, 1915.)

The words "any person not registered" in section 8 of the opium registration act of 1914 do not mean any person in the United States, but refer to the class dealt with by the statute—those required to register—and one not in that class is not subject to the penalties prescribed by the statute. (United States *v.* Jin Fuey Moy, 241 U. S. 394, 1916.) 225 Federal 1003, affirmed. See later case between same parties pending in United States Supreme Court.

The provisions of section 8 apply only to the classes of persons required by the act to register and pay the tax. (United States *v.* Denker, 255 Fed. 339, 1918.)

Under Revised Statutes, section 1025, providing that defects of form, not prejudicing defendant, shall not invalidate indictments, and Harrison Narcotic Act, section 8, relative to negativing exceptions in an indictment, an indictment under sections 1 and 2 of the Harrison Act need not negative exceptions in those sections. (United States *v.* Loewenthal, 257 Fed. 444, 1919.)

In a prosecution for violation of the Harrison Narcotic Drug Act, section 8, defendant not being charged as a physician or a druggist, and the indictment not negativing the exception of section 6 of the act, it was open to him to show he was merely dispensing medicinal preparations and remedies containing not more than the amount of morphine permitted by section 6. (Stetson *v.* United States, 257 Fed. 689, 1919.)

See also the case of United States *v.* Woods, 224 Federal 278, under section 1 of this act.

# INCOME, ESTATE, MUNITION MANUFACTURER'S, AND SPECIAL TAXES.

## INCOME TAX—ACT OF SEPTEMBER 8, 1916.

[Repealed by Act of Feb. 24, 1919.]

INCOME DEFINED.

SEC. 2. (a) That, subject only to such exemptions and deductions as are hereinafter allowed, the net income of a taxable person shall include gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, businesses, trade, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits, and income derived from any source whatever: *Provided*, That the term "dividends" as used in this title shall be held to mean any distribution made or ordered to be made by a corporation, joint-stock company, association, or insurance company, out of its earnings or profits accrued since March first, nineteen hundred and thirteen, and payable to its shareholders, whether in cash or in stock of the corporation, joint-stock company, association, or insurance company, which stock dividend shall be considered income to the amount of its cash value.

**Construction.**

Where an income tax law is doubtful, doubt should be resolved in favor of the taxpayer against the Government. (Miller *v.* Gearin, 258 Fed. 225, 1919.)

**Section 2 (a)—Income defined—"Stock dividends."**

United States District Court of New York. The provision of this section taxing stock dividends to the same extent as cash dividends was attacked as unconstitutional on the grounds that to tax "stock dividends" is to tax capital or principal, and that such a tax may not be imposed except as other direct taxes are laid, namely, by apportionment among the several States according to population. (Macomber *v.* Eisner, pending in U. S. Supreme Ct. Govt's demurrer overruled, on authority of Towne *v.* Eisner, in Dist. Ct.)

**Section 2 (a)—Income defined.**

Where, in 1907, the owner of land leased the same for 23 years under an agreement requiring the tenant to construct an expensive brick building, and on the tenant's default the owner retook possession in 1916, the value of the building can not be deemed income accruing in the year 1917, within this section, for under the lease the title to the building vested in the owner immediately upon construction, and the lessee's default caused the owner a loss. (Miller *v.* Gearin, 258 Fed. 225, 1919.)

### SECTION 8 (e)—RETURNS.

SEC. 8. (e) Persons carrying on business in partnership shall be liable for income tax only in their individual capacity, and the share of the profits of the partnership to which any taxable partner would be entitled if the same were divided, whether divided or otherwise, shall be returned for taxation and the tax paid under the provisions of this title: *Provided*, That from the net distributive interests on which the individual members shall be liable for tax, normal and additional, there shall be excluded their proportionate shares received from interest on the obligations of a State or any political or taxing subdivision thereof, and upon the obligations of the United States and its possessions, and all taxes paid to the United States or to any possession thereof, or to any State, county, or taxing subdivision of a State, and that for the purpose of computing the normal tax there shall be allowed a credit, as provided by section five, subdivision (b), for their proportionate share of the profits derived from dividends. And such partnership, when requested by the Commissioner of Internal Revenue, or any district collector, shall render a correct return of the earnings, profits, and income of the partnership, except income exempt under section four of this act, setting forth the item of the gross income and the deductions and credits allowed by this title, and the names and addresses of the individuals who would be entitled to the net earnings, profits, and income if distributed.

The provision of the 1916 act that members of partnerships shall be allowed credit for their proportionate share of partnership gains and profits derived from corporations taxable on their net income *Held*, to be a mere declaration of the rule under the 1913 act and not legislative recognition of a change. (U. S. *v.* Coulby, 251 Fed. 982, affirmed in 258 Fed. 27, 1919.)

### SECTION 12 (a)—DEDUCTIONS.

SEC. 12. (a) In the case of a corporation, joint-stock company or association, or insurance company, organized in the United States, such net income shall be ascertained by deducting from the gross amount of its income received within the year from all sources— * * * .

Second. All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business or trade; (a) in the case of oil and gas wells a reasonable allowance for actual reduction in flow and production to be ascertained not by the flush flow, but by the settled production or regular flow; (b) in the case of mines a reasonable allowance for depletion thereof not to exceed the market value in the mine of the product thereof which has been mined and sold during the year for which the return and computation are made, such reasonable allowance to be made in the case of both (a) and (b) under rules and regulations to be prescribed by the Secretary of the Treasury: *Provided*, That when the allowance authorized in (a) and (b) shall equal the capital originally invested, or in case of purchase made prior to March first, nineteen hundred and thirteen, the fair market value as of that date, no further allowance shall be made; and (c) in the case of insurance companies, the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: *Provided*, That no deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments made to increase the value of any property or estate, and no deduction shall be made or any amount of expense of restoring property or making good the exhaustion thereof

for which an allowance is or has been made: *Provided further*, That mutual fire and mutual employers' liability and mutual workmen's compensation and mutual casualty insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: *provided further*, That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof, and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year;

An operating lessee is entitled to the deductions allowed by Sec. 12 (second) of the act of September 8, 1916. (Op. Judge Westenhaver, U. S. D. C., No. Dist. of Ohio, Nov. 3, 1919, unreported, case of Mohawk Mining Co. *v.* Weiss.)

### SECTION 13 (c)—RETURNS—CORPORATIONS.

SEC. 13. (c) In cases wherein receivers, trustees in bankruptcy, or assignees are operating the property or business of corporations, joint-stock companies or associations, or insurance companies, subject to tax imposed by this title, such receivers, trustees, or assignees shall make returns of net income as and for such corporations, joint-stock companies or associations, and insurance companies, in the same manner and form as such organizations are hereinbefore required to make returns, and any income tax due on the basis of such returns made by receivers, trustees, or assignees shall be assessed and collected in the same manner as if assessed directly against the organizations of whose businesses or properties they have custody and control;

A trustee of a bankrupt corporation, who is not carrying on its business, but has received funds as a result of a compromise made by him with a foreign corporation of a claim for nonpayment of salary and commissions, is not liable to pay an income tax under this section, since under such section only net income earned by a trustee while operating the business of a bankrupt corporation is taxable. (In re Heller, Hirsh & Co. 258 Fed. 208, 1919.)

### SECTION 16—ADMINISTRATIVE.

SEC. 16. "SEC. 3173. It shall be the duty of any person, partnership, firm, association, or corporation, made liable to any duty, special tax, or other tax imposed by law, when not otherwise provided for, (1) in case of a special tax, on or before the thirty-first day of July in each year, (2) in case of income tax on or before the first day of March in each year, or on or before the last day of the sixty-day period next following the closing date of the fiscal year for which it makes a return of its income, and (3) in other cases before the day on which the taxes accrue, to make a list or return, verified by oath, to the collector or a deputy collector of the district where located, of the articles or objects, including the amount of annual income charged with a duty or tax, the quantity of goods, wares, and merchandise, made or sold and charged with a tax;

the several rates and aggregate amount, according to the forms and regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for which such person, partnership, firm, association, or corporation is liable: *Provided*, That if any person liable to pay any duty or tax, or owning, possessing, or having the care or management of property, goods, wares, and merchandise, article or objects liable to pay any duty, tax, or license, shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles, and objects liable to pay any duty or tax, or any business or occupation liable to pay any tax as aforesaid, then, and in that case, it shall be the duty of the collector or deputy collector to make such list or return, which being distinctly read, consented to, and signed and verified by oath by the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person: *Provided further*, That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or the deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post office, a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law within ten days from the date of such note or memorandum, verified by oath. And if any person, on being notified or required as aforesaid, shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is erroneous, false, or fraudulent, or contains any undervaluation or understatement, or refuses to allow any regularly authorized Government officer to examine the books of such person, firm, or corporation, it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of account containing entries relating to the business of such person, or any other person he may deem proper, to appear before him and produce such books at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects or income liable to tax or the returns thereof. The collector may summon any person residing or found within the State or Territory in which his district lies; and when the person intended to be summoned does not reside and can not be found within such State or Territory, he may enter any collection district where such person may be found and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned: *Provided*, That 'person,' as used in this section, shall be construed to include any corporation, joint-stock company or association, or insurance company when such construction is necessary to carry out its provisions.

"SEC. 3176. If any person, corporation, company, or association fails to make and file a return or list at the time prescribed by law, or makes, willfully or otherwise, a false or fraudulent return or list, the collector or deputy collector shall make the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise. Any return or list so made and subscribed by a collector or deputy collector shall be prima facie good and sufficient for all legal purposes.

"If the failure to file a return or list is due to sickness or absence the collector may allow such further time, not exceeding thirty days, for making and filing the return or list as he deems proper.

"The Commissioner of Internal Revenue shall assess all taxes, other than stamp taxes, as to which returns or lists are so made by a collector or deputy collector. In case of any failure to make and file a return or list within the time prescribed by law or

by the collector, the Commissioner of Internal Revenue shall add to the tax fifty per centum of its amount except that, when a return is voluntarily and without notice from the collector filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax. In case a false or fraudulent return or list is willfully made, the Commissioner of Internal Revenue shall add to the tax one hundred per centum of its amount.

"The amount so added to any tax shall be collected at the same time and in the same manner and as part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax."

Revised Statutes, section 3173, authorizing the Commissioner of Internal Revenue to require persons who fail or refuse to make proper returns to produce their books, is not unconstitutional, since an order to produce books is not violative of the rights of a witness, though such rights may be invaded after his appearance. (Calkins et. al. *v.* Smietanka, 240 Fed. 138, 1917.)

Section 3176, Revised Statutes, as amended by the act of September 8, 1916, did not take away from the Commissioner the power given by the other statutes to assess the tax on sales of grain, on memorandum of which the stamps were not affixed. (Calkins et. al. *v.* Smietanka, 240 Fed. 138, 1917.)

## TITLE II—ESTATE TAX.

### RATES OF TAX.

SEC. 201. That a tax (hereafter in this title referred to as the tax) equal to the following percentages of the value of the net estate, to be determined as provided in section two hundred and three, is hereby imposed upon the transfer of the net estate of every decedent dying after the passage of this act, whether a resident or nonresident of the United States:

One per centum of the amount of such net estate not in excess of $50,000;

Two per centum of the amount by which such net estate exceeds $50,000 and does not exceed $150,000;

Three per centum of the amount by which such net estate exceeds $150,000 and does not exceed $250,000;

Four per centum of the amount by which such net estate exceeds $250,000 and does not exceed $450,000;

Five per centum of the amount by which such net estate exceeds $450,000 and does not exceed $1,000,000;

Six per centum of the amount by which such net estate exceeds $1,000,000 and does not exceed $2,000,000;

Seven per centum of the amount by which such net estate exceeds $2,000,000 and does not exceed $3,000,000;

Eight per centum of the amount by which such net estate exceeds $3,000,000 and does not exceed $4,000,000;

Nine per centum of the amount by which such net estate exceeds $4,000,000 and does not exceed $5,000,000; and

Ten per centum of the amount by which such net estate exceeds $5,000,000.

**Section 201.**

See case under section 203 below.

THE NET ESTATE.

SEC. 203. That for the purpose of the tax the value of the net estate shall be determined—

(*a*) In the case of a resident, by deducting from the value of the gross estate—

(1) Such amounts for funeral expenses, administration expenses, claims against the estate, unpaid mortgages, losses incurred during the settlement of the estate arising from fires, storms, shipwreck, or other casualty, and from theft, when such losses are not compensated for by insurance or otherwise, support during the settlement of the estate of those dependent upon the decedent, and such other charges against the estate as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered; and

(2) An exemption of $50,000;

(*b*) In the case of a nonresident, by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States that proportion of the deductions specified in paragraph (1) of subdivision (*a*) of this section which the value of such part bears to the value of his entire gross estate, wherever situated. But no deduction shall be allowed in the case of a nonresident unless the executor includes in the return required to be filed under section two hundred and five the value at the time of his death of that part of the gross estate of the nonresident not situated in the United States.

**Section 203 (a–1).**

In view of the history of the legislation, collateral inheritance taxes imposed by the State of Pennsylvania are to be treated as paid by the estate, and may be deducted as expenses of administration, or claims against the estate, or other charges against the estate allowed by the laws of the State, within the act of September 8, 1916, imposing a Federal tax upon the transfer of the net estate of decedents. (Northern Trust Co. *v.* Lederer, 257 Fed. 812, 1919.)

TITLE III—MUNITION MANUFACTURER'S TAX.

Amended by act of October 3, 1917, section 214. Repealed by act of February 24, 1919, section 1400 (a), subject to limitations in section 1400 (b).

SEC. 300. That when used in this title—

The term "person" includes partnerships, corporations, and associations;

The term "taxable year" means the twelve months ending December thirty-first. The first taxable year shall be the twelve months ending December thirty-first, nineteen hundred and sixteen; and

The term "United States" means only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

SEC. 301. (1) That every person manufacturing (a) gunpowder and other explosives, excepting blasting powder and dynamite used for industrial purposes; (b) cartridges, loaded and unloaded, caps or primers, exclusive of those used for industrial purposes; (c) projectiles, shells, or torpedoes of any kind, including shrapnel, loaded or unloaded, or fuses, or complete rounds of ammunition; (d) firearms of any kind and appendages, including small arms, cannon, machine guns, rifles, and bayonets; (e) electric motor boats, submarine or submersible vessels or boats; or (f) any part of any of the articles

mentioned in (b), (c), (d), or (e); shall pay for each taxable year, in addition to the income tax imposed by Title I, an excise tax of twelve and one-half per centum upon the entire net profits actually received or accrued for said year from the sale or disposition of such articles manufactured within the United States: *Provided, however*, That no person shall pay such tax upon net profits received during the year nineteen hundred and sixteen derived from the sale and delivery of the articles enumerated in this section under contracts executed and fully performed by such person prior to January first, nineteen hundred and sixteen.

(2) This section shall cease to be of effect at the end of one year after the termination of the present European war, which shall be evidenced by the proclamation of the President of the United States declaring such war to have ended.

"MUNITIONS MANUFACTURERS" DEFINED.

**1. Munitions manufacturer's tax—Construction of statute.**

The pertinent subjects of inquiry where section 301 of the act of September 8, 1916, is to be applied are, first, whether the war munitions or war accessories were articles "manufactured within the United States"; second, if they were so manufactured, who manufactured such articles and what were the "net profits actually received or accrued * * * from the sale or disposition of such articles"; third, if they were manufactured within the United States, who manufactured any part of such articles and what were the "net profits actually received or accrued * * * from the sale or disposition of such articles."

**2. Same—Subject of taxation.**

The broad purpose of Congress in the passage of section 301 of the act of September 8, 1916, was to select as the subject of taxation war munitions and war appliances; it was not intended to tax the manufacturer of articles or parts thereof which, while susceptible of warlike use, were, in fact, not so used, but remained in the channels of normal commerce and use.

**3. Same—Contractor—Manufacture of shells.**

A steel company which, under contract to deliver shells to a foreign Government, manufactured steel of the characteristics necessary to the manufacture of shells, retained ownership through all subsequent steps by subcontractors, followed up and checked every operation on the original steel, and delivered the completed shells to the foreign Government, was a "person manufacturing * * * shells" within the meaning of section 301 of the act of September 8, 1916, it appearing that the operations by the subcontractors depended on the composition and characteristics of the steel made in the initial step, the relative importance of which step, as compared with the remaining eight by the subcontractors, is shown by the fact that bare material and running expenses involved therein amounted to about one-half of the sum paid to the contractors for work, material, and profits.

**4. Same—Subcontractor—Manufacture of Shells or any part thereof.**

A steel company which, proceeding under a subcontract, selected the material required in shells, made the steel which constituted the shells, and by work upon said steel segregated it from the general field of commercial use and limited it to shell making, the six several steps performed constituting about 40 per cent of the cost of the shells, was a "person manufacturing * * * shells * * * or any part of the articles named," within the meaning of section 301 of the act of September 8, 1916, though 29 further steps remained to be taken by the contractor and though some of the material, when imperfect, was scrapped and used for other mechanical purposes.

**5. Same—Subcontractor—Manufacture of shells or any part thereof.**

A company which, under a subcontract, agreed to manufacture and furnish to a contractor for shells, rough steel shell forgings of the character provided in the contract as to chemical constituents, tensile strength, size, shape, etc., and which to fulfill its contract either made, had made, or bought in the market the grade of steel required, of the common commercial type known as rounds, which rounds it nicked and broke into 18-inch lengths, which it then put through two forging processes, piercing a hole and lengthening the rounds, the output being a hollow steel body or shell form weighing about 170 pounds, is a "person manufacturing * * * shells * * * or any part of" a shell, within the meaning of section 301 of the act of September 8, 1916, though the contractor, to make the shell form suitable for use as a shell, was required to dress, bore, and machine it down to 77 pounds by means of some 27 distinct and separate processes.

**6. Same—"Any part"—Control of customs law decisions.**

The words "any part," as used in section 301 of the act of September 8, 1916, do not mean "any completed part." Decisions involving customs laws exempting "manufactured" articles are not controlling, as the objects of the customs laws and said section 301 are not the same.

**7. Judgments of lower courts.**

Judgments of the District Court of the United States for the Western District of Pennsylvania in the case of Carbon Steel Co. *v.* Lewellyn, collector (255 Fed. 364), affirmed; judgment of the District Court of the United States for the Eastern District of Pennsylvania in the case of Worth Bros. Co. *v.* Lederer, collector (256 Fed. 116), affirmed; judgment of the District Court of the United States for the Western District of Pennsylvania in the case of Lewellyn, collector, *v.* Forged Steel Wheel Co. reversed. (258 Fed. 533.) These cases now pending in United States Supreme Court.

**Supplies for manufacture furnished by the United States.**

A company manufacturing munitions for the United States out of supplies furnished by the United States, which were shipped in interstate commerce, etc., is acting under the authority of the laws of the United States to as full an extent as though it had been incorporated under and in pursuance of national laws * * *. (Wagner Elec. Mfg. Co. *v.* District Lodge No. 9, Int'l Ass'n of Mach., 252 Fed. 597.)

### TITLE IV—CAPITAL STOCK TAX.

SEC. 407. That on and after January first, nineteen hundred and seventeen, special taxes shall be, and hereby are, imposed annually, as follows, that is to say: * * *

Every corporation, joint-stock company or association, now or hereafter organized in the United States for profit and having a capital stock represented by shares, and every insurance company, now or hereafter organized under the laws of the United States, or any State or Territory of the United States, * * *

shall pay annually a special excise tax with respect to the carrying on or doing business by such corporation, joint-stock company or association, or insurance company, * * *

(See cases under act of Aug. 5, 1909, on "Doing business," made applicable to this section by T. D. 2418.)

### ACT OF MARCH 3, 1917.

[No court decisions.]

Title I, Special preparedness fund. (Repealed by act Oct. 3, 1917, sec. 1301.)

Title II, Excess-profits tax. (Repealed by act Oct. 3, 1917, sec. 214.)

Title III, Estate tax. (Repealed by act Feb. 24, 1919, sec. 1400.)

Title IV, Miscellaneous. (Sec. 402, returns of dividends, amended by act Oct. 3, 1917; sec. 1210, repealed by act Feb. 24, 1919, sec. 1400.)

# REVENUE ACT OF 1917.

## STAMP TAXES—ACT OF OCTOBER 3, 1917.

[Repealed by Act of Feb. 24, 1919.]

Titles I, II, III, IV, V, VI, VII, VIII, IX, X, XII repealed by act of February 24, 1919.

### TITLE I—WAR INCOME TAX.

SECTION 1. That in addition to the normal tax imposed by subdivision (a) of section one of the Act entitled "An Act to increase the revenue, and for other purposes," approved September eighth, nineteen hundred and sixteen, there shall be levied, assessed, collected, and paid a like normal tax of two per centum upon the income of every individual, a citizen or resident of the United States, received in the calendar year nineteen hundred and seventeen and every calendar year thereafter.

**Income.**

Where defendant embezzled moneys which were delivered to him to be paid as insurance premiums, he committed a larceny, and the money so received was not subject to taxation under the income tax act. (Rau *v.* United States, 260 F. 131.)

### TITLE VIII—STAMP TAXES—SCHEDULE A.

3. Capital stock, issue: On each original issue, whether on organization or reorganization, of certificates of stock by any association, company, or corporation, on each $100 of face value or fraction thereof, 5 cents: *Provided,* That where capital stock is issued without face value, the tax shall be 5 cents per share, unless the actual value is in excess of $100 per share, in which case the tax shall be 5 cents on each $100 of actual value or fraction thereof.

The stamps representing the tax imposed by this subdivision shall be attached to the stock books and not to the certificates issued.

**Section 807—Schedule A (3)—Capital stock, issue.**

Issue of certificates of stock of one class in conversion and exchange for stock of another class held not required to be stamped as an "original issue," for the reason that Congress intended to tax transactions by which substantial consideration passed, and also for the reason that Congress in reenacting a similar provision of the revenue acts of 1898 and of 1914, which had been construed by the Treasury Department as not requiring stamps upon certificates issued for conversion purposes, had approved and made part of the present act such former practical construction. In his opinion Judge Hand said:

I can not regard an issue of stock based upon a conversion privilege which does not increase the total stock liability of a corporation as coming within the purview of the statute. (Unreported case of Wabash Ry. Co. *v.* Edwards, Collector, U. S. D. C., So. Dist. of New York, June, 1919. This case now on appeal, October, 1919.)

ACT OF OCTOBER 3, 1917—TITLE X.

SEC. 1004. That whoever fails to make any return required by this Act or the regulations made under authority thereof within the time prescribed or who makes any false or fraudulent return, and whoever evades or attempts to evade any tax imposed by this Act or fails to collect or truly to account for and pay over any such tax, shall be subject to a penalty of not more than one thousand dollars, or to imprisonment for not more than one year, or both, at the discretion of the court, and in addition thereto a penalty of double the tax evaded, or not collected, or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected, in any case in which the punishment is not otherwise specifically provided.

**Prosecution where compromise accepted.**

Under Revised Statutes, section 3229 (Comp. St. sec. 5952), empowering Commissioner of Internal Revenue, with advice of Secretary of the Treasury, to compromise any criminal case arising under the internal revenue laws, one who failed to file an income tax return as required by the act October 3, 1917 (sec. 1004) can not be successfully prosecuted for this failure, where the collector of internal revenue offered to compromise on payment of the tax and penalty, and such offer was accepted. (Rau *v.* United States, 260 Fed. 131.)

Where internal-revenue officers, after defendant admitted he had not filed an income tax return as required by Act October 3, 1917 (sec. 1004), accepted not only the tax, but the penalty, informing defendant that such payment would end the matter and there would be no indictment, such acceptance and statement was a "compromise," within Revised Statutes (sec. 3229), and was a bar to prosecution. (Id.)

In a prosecution for failure to file an income tax return as required by act October 3, 1917 (sec. 1004), that sum paid by defendant to internal-revenue officer after he had admitted he did not file the return was retained by the Treasury is evidence that the money was received in compromise of the case, which compromise was authorized by Revised Statutes section 3229. (Id.)

In a prosecution for failure to file an income tax return as required by act October 3, 1917 (sec. 1004), the question whether the internal-revenue officers compromised the case, as authorized by Revised Statutes section 3229, held for the jury. (Id.)

# INCOME TAX.

## ACT OF FEBRUARY 24, 1919—TITLE II—INCOME TAX.

INDIVIDUAL RETURNS.

SEC. 223. That every individual having a net income for the taxable year of $1,000 or over if single or if married and not living with husband or wife, or of $2,000 or over if married and living with husband or wife, shall make under oath a return stating specifically the items of his gross income and the deductions and credits allowed by this title. If a husband and wife living together have an aggregate net income of $2,000 or over, each shall make such a return unless the income of each is included in a single joint return.

If the taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer.

**Returns under oath.**

Indictment, charging that perjury had been committed by falsely swearing to an income tax return before a commissioner of deeds of New York City, had been demurred to, raising point that as such an officer was not authorized to take an oath by any law of the United States no crime had been committed. Judge Hand overruling this demurrer *held* that article 406 of Regulations 45 which was promulgated, under concededly legal powers, by the Commissioner of Internal Revenue, includes all such persons as were authorized by local law to take oaths in their several districts and allows a commissioner of deeds among other officials to take such an oath. (Op. Judge Hand, Oct. 20, 1919, U. S. D. C., So. Dist. of New York, case of United States of America *v.* Benowitz, T. D. 2952.)

RECEIPTS FOR TAXES.

SEC. 251. That every collector to whom any payment of any tax is made under the provisions of this title shall upon request give to the person making such payment a full written or printed receipt, stating the amount paid and the particular account for which such payment was made; and whenever any debtor pays taxes on account of payments made or to be made by him to separate creditors the collector shall, if requested by such debtor, give a separate receipt for the tax paid on account of each creditor in such form that the debtor can conveniently produce such receipts separately to his several creditors in satisfaction of their respective demands up to the amounts stated in the receipts; and such receipt shall be sufficient evidence in favor of such debtor to justify him in withholding from his next payment to his creditor the amount therein stated; but the creditor may, upon giving to his debtor a full written receipt acknowledging the payment to him of any sum actually paid and accepting the amount of tax paid as aforesaid (specifying the same) as a further satisfaction of the debt to that amount, require the surrender to him of such collector's receipt.

**1. Receipts to taxpayers—Duty to issue.**

The fact that section 251 of the act of February 24, 1919, requires that full written or printed receipts be issued to taxpayers only on request therefor does not limit the collector's mandatory duty to issue them when requested and does not fail to make them documents required to be issued whenever requested, and the receipts are plainly documents required to be issued by such section.

**2. Same—Simulation or fraudulent execution.**

Such receipts are documents required by provisions of the internal revenue laws and by regulations made in pursuance thereof, within the meaning of section 3451, Revised Statutes, making it an offense to simulate or falsely or fraudulently execute or sign any document required by the internal revenue laws, or any regulation made in pursuance thereof, or to procure the same to be falsely or fraudulently executed, or to advise, aid in, or connive at such execution thereof.

**3. Same—Blanks.**

The offense may be committed either where the receipt itself is a genuine receipt of the kind kept for that purpose in the office of the internal revenue collector, but signed by the defendant without authority, or where, even if not a blank of the kind required to be kept, the blank itself is simulated or falsely or fraudulently executed and issued by a person who has no power or authority to do so.

**4. Same—Income-tax receipts.**

Where defendant was charged with violating section 3451, Revised Statutes, in that he falsely, fraudulently, etc., simulated and executed and advised, aided in, and connived at the execution of certain income-tax receipts required by section 251 of the act of February 24, 1919, to be given when requested, what defendant told the persons who paid the money is not material, nor is the question whether or not such persons were subject to the payment of an income tax, or to assessment and levy of such tax. (United States *v.* Pittaro, reported only in T. D. 2874, 1919.)

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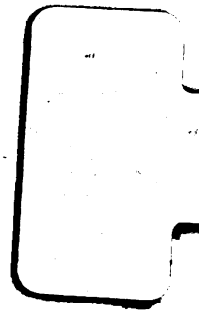

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